No. 98-405-ATX Title: Janet Reno, Attorney General, Appellant
v.
Bossier Parish School Board

Docketed: September 4, 1998 Court: United States District Court for the District of Columbia

Vide:
98-406

Entry	Date	Proceedings and Orders
	Sep 4 1998	Statement as to jurisdiction filed. (Response due December 14, 1998)
	Sep 4 1998	Appendix of appellant filed.
	Oct 21 1998	DISTRIBUTED. November 6, 1998
	Oct 27 1998	Response requested. (Due November 27, 1998 - NONE RECEIVED)
	Nov 6 1998	Order extending time to file response to jurisdictional statement until December 14, 1998.
	Dec 14 1998	Motion of appellee Bossier Parish School Board to dismiss or affirm filed. VIDED.
	Dec 29 1998	Reply brief filed. VIDED.
	Dec 29 1998	Reply brief of appellants George Price, et al. filed. VIDED.
	Dec 30 1998	REDISTRIBUTED. January 15, 1999
	Jan 19 1999	REDISTRIBUTED. January 22, 1999
	Jan 22 1999	PROBABLE JURISDICTION NOTED. The case is consolidated with No. 98-406, Price v. Bossier Parish School Board, and a total of one hour is allotted for oral argument. The brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellee is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply. SET FOR ARGUMENT April 26, 1999.
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	Mar 5 1999	Joint appendix filed. VIDED.
	Mar 5 1999	*Joint appendix in three volumes.
	Mar 5 1999	Brief of appellants George Price, et al. filed. VIDED.
	Mar 5 1999	Brief of the Federal Appellant filed. VIDED.
	Mar 12 1999	CIRCULATED.
	Mar 12 1999	Motion of Solicitor General for divided argument filed.
	Mar 29 1999	Motion of Solicitor General for divided argument GRANTED.
	Apr 2 1999	Brief of appellee Bossier Parish School Board filed. VIDED.
	Apr 5 1999	Letter from counsel for the appellee received and distributed.
	Apr 8 1999	Record filed.
	Apr 16 1999	Reply brief of Federal Appellant filed. VIDED.
	Apr 16 1999	Reply brief of appellants George Price, et al. filed. VIDED.
	Apr 26 1999	ARGUED.

Supreme Court, U.S.
FILED

98 405 SEP 4 1998

No.

In the Supreme Court of the United States

OCTOBER TERM, 1997

JANET RENO, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether the district court erred in concluding that, because Bossier Parish School Board's 1992 redistricting plan was not enacted with a retrogressive purpose, it was not enacted with "the purpose * * * of denying or abridging the right to vote on account of race," within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

PARTIES TO THE PROCEEDING

Bossier Parish School Board was the plaintiff in the district court and is the appellee in this Court. Janet Reno, the Attorney General of the United States, was the defendant in the district court and is the appellant in this Court. Defendant-intervenors George Price, *et al.*, have filed a separate notice of appeal from the judgment of the district court and are filing a separate jurisdictional statement.

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In the Supreme Court of the United States

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BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court that is the subject of this appeal (App. 1a-28a)[1] is not yet published, but is available at 1998 WL 293272. An earlier opinion of the district court (App. 78a-144a) is reported at 907 F. Supp. 434. This Court's opinion on appeal from the district court's initial decision (App. 29a-77a) is reported at 117 S. Ct. 1491.

JURISDICTION

The judgment of the three-judge district court was entered on May 4, 1998.[2] A notice of appeal was filed on July

[1] "App." refers to the separately bound appendix to this jurisdictional statement.

[2] Although notations on the district court's opinion and order indicate that they were "filed" on May 1, 1998 (App. 1a, 28a), the district court's docket shows that final judgment was actually entered on May 4, 1998. See App. 242a.

6, 1998 (the Monday following Friday, July 3, a federal holiday). App. 242a-243a. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, is reproduced at App. 244a-246a.

STATEMENT

The State of Louisiana and all of its political subdivisions, including appellee Bossier Parish School Board (appellee or Board), are jurisdictions covered by the "preclearance" requirements of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. See 28 C.F.R. Pt. 51, App. Section 5 provides that a covered jurisdiction may not implement any change in election practices unless it has first submitted the proposed change to the Attorney General and the Attorney General has not interposed an objection to the change within 60 days, or unless it has obtained a declaratory judgment from the United States District Court for the District of Columbia that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." App. 244a-245a.

The Board submitted its 1992 redistricting plan to the Attorney General, but the Attorney General objected to it. The Board then filed suit in the District Court for the District of Columbia, and that court precleared the plan in 1995, concluding that neither a prohibited purpose nor a prohibited effect was present. App. 78a-144a. On appeal, this Court held that a redistricting plan has a prohibited "effect" under Section 5 only if the proposed change would be retrogressive, *i.e.*, if it would weaken the position of racial minorities in the jurisdiction with respect to their effective exercise of the electoral franchise. App. 33a-45a. With respect to the prohibited "purpose" under Section 5, by

contrast, the Court reserved "the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent" and requires consideration whether the jurisdiction acted with the intent to discriminate against minorities, but not necessarily to make their position worse than before, and stated that "[t]he existence of such a purpose, and its relevance to § 5, are issues to be decided on remand." App. 45a-46a. On remand, the district court declined to consider any discriminatory purpose other than retrogression, App. 3a, and precleared appellee's election plan because no retrogressive purpose had been shown, App. 5a-8a. The question presented on this appeal is whether a covered jurisdiction's discriminatory, but not retrogressive, purpose in enacting an election plan—such as its purpose to maintain and entrench a system that unconstitutionally dilutes a racial minority's votes—bars preclearance under Section 5, and accordingly whether the district court erred as a matter of law in precleaving appellee's election plan based on the lack of evidence of retrogressive intent.

1. This case involves a redistricting plan adopted in 1992 by Bossier Parish School Board. Bossier Parish is located in northwestern Louisiana. The Parish's primary governing body, the Police Jury, and the Parish's School Board each consist of 12 members elected from single-member districts by majority vote to four-year terms. App. 145a. There is no legal requirement, however, that the 12 Police Jury districts and the 12 School Board districts be the same, and the districts for the two bodies were different throughout the 1980s. App. 150a-151a.

The School Board and the Parish each have a history of racial discrimination beginning before the Civil War and continuing to the present. App. 210a-220a. That discrimination has affected both the administration of the school system by the Board and the drawing of voting districts for elections to both the Board and the Police Jury.

As for the administration of the school system, *de jure* segregation prevailed in Louisiana's schools long after this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). App. 216a. In 1965, the Board was placed under a court order to eliminate the vestiges of racial discrimination in its school system. *Lemon* v. *Bossier Parish Sch. Bd.*, 240 F. Supp. 709, 715-716 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). The Board repeatedly sought to evade its desegregation obligations through a variety of devices, and it remains subject to the *Lemon* court's desegregation decree, its 1979 request for termination having been denied. App. 216a-217a. The Board has also violated the court's order to maintain a biracial committee to recommend ways to attain and maintain a unitary school system. App. 182a-183a. The Board has continued to assign disproportionate numbers of black teachers to schools with predominantly black enrollment, and the schools in Bossier Parish have become increasingly segregated by race since the 1980s. App. 217a-218a.

As for the Parish's electoral systems, in 1990, black persons comprised 20.1% of the total population of Bossier Parish and 17.6% of the voting age population. App. 145a-146a. The black population of the Parish is concentrated in two areas: more than 50% of the black residents live in Bossier City, and the remaining black population is concentrated in four populated areas in the northern rural part of the Parish. App. 146a-147a. The parties have also stipulated to facts showing that voting in the Parish is racially polarized, and that both black and white voters prefer candidates of their own race. App. 201a-206a. (One Police Juror estimated that at least 80% of white and black voters vote for candidates of their own race. App. 20[illegible].) The parties have also stipulated that it is feasible to draw two reasonably compact majority-black districts in the Parish using traditional districting features such as roads,

streams, and railroads. App. 154a-155a, 192a-194a. Nevertheless, the Police Jury has never had a districting plan that contained any majority-black districts, App. 79a, and black voters have historically been unable to elect candidates of their choice to political positions in the Parish, App. 195a-206a.[3]

2. After the 1990 census revealed that its districts were malapportioned, the Police Jury began the process of redistricting. "At the time of the 1990-1991 redistricting process, some Police Jurors were specifically aware that a contiguous black-majority district could be drawn both in

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[3] When the stipulated record was compiled in this case, no black person had ever been elected to the Board. App. 195a. Of the 14 elections in the Parish held between 1980 and 1990 in which a black candidate ran against a white candidate in a single-member district or for mayor, only two black candidates (one for Police Jury, one for Bossier City Council) won; those candidates both ran in districts that contained an Air Force base that increased the ability of black voters to elect representatives of their choice, in a manner particular to those districts. App. 206a-207a. (That advantage was diminished after redistricting in the 1990s. App. 80a, 200a.) The black incumbent Police Juror was reelected, unopposed, in 1991, under the new Police Jury plan. App. 198a. The black City Councilmember ran against a white opponent in 1993 and lost. App. 200a.

Before its earlier decision in this case, this Court denied the Board's motion to supplement the record with the results of elections that occurred after the Board's adoption of the 1992 redistricting plan at issue here. *Reno* v. *Bossier Parish Sch. Bd.*, 517 U.S. 1154 (1996). On remand, the parties agreed to rest on the largely stipulated record that they had compiled. App. 1a. The district court denied the Board's request that it take judicial notice of the results of elections held since its previous decision, in which two black Board members were elected, noting that the Board had agreed to rest on the stipulated record and had declined its invitation to reopen the record. The court observed that, were it "to consider the results at all, [it] would need more information about them." See App. 1a-2a n.1, 10a. The district court therefore decided this case on the parties' stipulation that no black person had ever been elected to the Board.

northern Bossier Parish and in Bossier City," and "it was obvious that a reasonably compact black-majority district could be drawn within Bossier City." App. 154a-155a. Nonetheless, during public meetings in April 1991, white Police Jurors and the Police Jury's cartographer told citizens that it was impossible to create such districts because the black population was too dispersed. App. 160a-162a. On April 30, 1991, the Police Jury adopted a redistricting plan that, like all of its predecessors, contained no majority-black districts. App. 163a-164a.

On May 28, 1991, the Police Jury submitted its redistricting plan to the Department of Justice for preclearance under Section 5. The Police Jury did not provide the Department with information then available to it showing that reasonably compact majority-black districts could be created. Nor did it provide a copy of a letter from the Concerned Citizens of Bossier Parish, a local organization, protesting the Police Jury's exclusion of black citizens from the redistricting process, despite the organization's express request that the letter be included in the Police Jury's submission. On July 29, 1991, based on the information submitted to it, the Department of Justice precleared the plan for Police Jury elections. App. 165a-167a.

3. The School Board initially proceeded without urgency on its own redistricting process, as its next elections were not scheduled to occur until October 1994. App. 172a. The Board hired Gary Joiner, the Police Jury's cartographer, to develop a redistricting plan. Joiner estimated that he would spend 200 to 250 hours on the project. App. 173a. On September 5, 1991, Joiner presented the already-precleared Police Jury plan to the Board, along with precinct maps (because, Joiner explained, the Board would have to work with the Police Jury if it wanted to alter precinct lines). App. 174a.

The Board did not at that time adopt the Police Jury plan, which reflected different priorities than those of the Board. First, police juries "are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. * * * [B]oard members, by contrast, are typically concerned with having a public school or schools in each district." App. 151a. The district lines in the Police Jury plan do not correspond with school attendance zones, and some of the Police Jury districts contain no schools. App. 191a. Second, the Police Jury plan did not correspond to the distribution of Board incumbents; if adopted by the Board, that plan would have created two districts that pitted Board incumbents against each other and two other districts that contained no Board incumbents. App. 181a.

Beginning in March 1992, representatives of local black community groups (including defendant-intervenor George Price, president of the local chapter of the NAACP) requested that representatives of the black community be included in the Board's redistricting process. The Board did not respond to those requests. App. 175a-176a. On August 20, 1992, at a time when no other plan had been publicly released, Price presented a partial plan, consisting of two majority-black districts, that had been developed by the NAACP. App. 177a, 192a. Price was told, however, that the Board would not consider a plan that did not also draw the other ten districts. App. 177a. Accordingly, at a Board meeting held on September 3, 1992, Price presented an NAACP plan that depicted all 12 districts and included two majority-black districts. *Ibid.*

The Board refused to consider Price's new plan, ostensibly because "the [NAACP] plan's district lines crossed existing precinct lines, and therefore violated state law." App. 177a-179a. The Board's cartographer and attorney knew at the time, however, that crossing existing precinct lines did not

legally preclude the Board from considering the plan. App. 179a. Although state law prohibits school boards themselves from splitting precincts, App. 149a, school boards may and do "request precinct changes from the Police Jury necessary to accomplish their redistricting plans." App. 151a. The Board had itself anticipated that it would be necessary to split precincts in fashioning a redistricting plan; Joiner had given the Board precinct maps at the start of the redistricting process, and had told the Board members that they "would have to work with the Police Jury to alter the precinct lines." App. 174a.

At the next Board meeting on September 17, 1992, only two weeks after Price had presented the NAACP plan, the Board passed a motion of intent to adopt the Police Jury plan that it had initially rejected. The Board's action to adopt the Police Jury plan precipitated overflow citizen attendance at a Board hearing on September 24, 1992, at which many citizens vocally opposed the plan. Price explained to the Board that, in light of the NAACP plan demonstrating the feasibility of drawing one or more reasonably compact majority-black districts, the Department of Justice's preclearance of the Police Jury plan did not guarantee its preclearance for Board elections. The Board nevertheless adopted the Police Jury plan at its next meeting on October 1, 1992. App. 180a-181a.

There was evidence that several Board members preferred the Police Jury plan because they did not want black representation on the Board. Board member Barry Musgrove said that "the Board was 'hostile' toward the idea of a black majority district." App. 83a n.4. Board member Henry Burns stated that, although he personally favored "having black representation on the board, other school board members oppose[d] that idea." *Ibid.* Thomas Myrick, a white Board member who represented a district containing portions of predominantly black communities, told Price that

he (Myrick) "had worked too hard to get [his] seat and that he would not stand by and 'let us take his seat away from him.'" *Ibid.*

The Board submitted the 1992 plan to the Attorney General for preclearance. On August 30, 1993, the Attorney General interposed an objection to the Board's plan, citing new information that had not been provided when the Police Jury submitted the same plan, such as community objections to the plan, the Board's refusal to engage in efforts to accommodate the concerns of the black community, and the feasibility of a majority-black district. App. 233a-237a.

4. On July 8, 1994, the Board filed a declaratory judgment action in the United States District Court for the District of Columbia, seeking preclearance of its 1992 election plan. The government opposed preclearance, arguing that the Board had not shown either that the plan lacked a discriminatory effect or that it lacked a discriminatory purpose. The government did not argue, however, that the 1992 plan had either the purpose or effect of making the position of blacks *worse* than before it was enacted.[4]

On November 2, 1995, a divided three-judge district court granted preclearance. App. 78a-144a. With respect to the government's argument that the Police Jury plan had a discriminatory effect, the court held that a voting change cannot be denied preclearance under the "effect" analysis of Section 5 solely on the ground that the change would "result[] in a denial or abridgment of the right * * * to vote on account of race or color," in violation of Section 2 of the

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[4] The parties stipulated that, because the reductions in the black share of the population in some districts were *de minimis*, the plan "is not retrogressive to minority voting strength compared to the existing benchmark plan and therefore will not have a discriminatory [*i.e.*, retrogressive] effect." App. 221a.

Voting Rights Act, 42 U.S.C. 1973. App. 89a-102a.[5] The court also ruled that the Board, in adopting the Police Jury plan, did not have a racially discriminatory purpose that would bar preclearance. App. 102a-114a. In reaching that conclusion, the court acknowledged that the Board had "offered several reasons for its adoption of the Police Jury plan that were clearly not [its] real reasons." App. 106a n.15. The court nonetheless found "legitimate, non-discriminatory motives" for the Board's adoption of the Police Jury plan: "The Police Jury offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing)." App. 106a.

Judge Kessler concurred in part and dissented in part, and would have denied preclearance. App. 115a-144a. Although she agreed with the majority that evidence of a Section 2 violation does not *per se* prevent Section 5 preclearance, she dissented from the majority's conclusion that the Board acted with legitimate, nondiscriminatory motives. App. 115a. Taking into account evidence that, she maintained, was relevant to the intent analysis under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977), she found that "the evidence demonstrates conclusively that [the Board] acted with discriminatory purpose." App. 117a, 118a.

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[5] Section 2(a) of the Voting Rights Act bars all States and their political subdivisions from maintaining any voting "standard, practice, or procedure" that "results in a denial or abridgment of the right * * * to vote on account of race or color." 42 U.S.C. 1973(a). Under Section 2(b) of the Act, a voting practice results in a denial or abridgment of the right to vote if, "based on the totality of [the] circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [racial minority groups] * * * in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973(b).

5. The government appealed to this Court, and argued that a voting change may not be precleared under Section 5 if the change would violate Section 2. This Court disagreed with the government on that point and held, in agreement with the district court, that a voting change may not be denied preclearance under Section 5 for having a discriminatory "effect" solely because the change would "result" in a violation of Section 2. App. 33a-45a. The Court explained that "a plan has an impermissible effect under § 5 only if it would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." App. 35a (internal quotation marks omitted).

The Court also held, however, that evidence that a voting change would violate Section 2 by diluting minority voting strength is relevant to whether that change has a discriminatory *purpose*, and whether it should be denied preclearance. App. 45a-51a. The Court stated that, even if the only discriminatory purpose that requires denial of preclearance under Section 5 is a retrogressive purpose, evidence of vote dilution is relevant to that analysis. App. 47a. The Court remanded the case to the district court for further consideration as to whether the Board had a discriminatory purpose in adopting the 1992 plan. App. 50a-51a. In remanding the case, the Court "[left] open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent," and stated that "[t]he existence of such a purpose, and its relevance to § 5, are issues to be decided on remand." App. 45a-46a.[6]

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[6] In separate opinions, Justice Breyer, joined by Justice Ginsburg, and Justice Stevens, joined by Justice Souter, concluded that the purpose inquiry under Section 5 extends beyond the search for retrogressive intent, and "includes the purpose of unconstitutionally diluting minority voting strength." App. 56a (Breyer, J., concurring in part and concurring the judgment); App. 76a (Stevens, J., dissenting in part and concurring in

6. On remand, the parties rested on the original record. App. 1a. The government argued that a redistricting plan may not be precleared if it was enacted with a discriminatory (albeit not necessarily retrogressive) purpose, and that the evidence showed that the Board had adopted the 1992 plan with the discriminatory purpose of blocking advances in minority voting strength and maintaining a discriminatory status quo, which diluted blacks' voting strength in Bossier Parish. The district court, again divided, again precleared the Board's plan. App. 1a-28a.

As to the central legal question left open by this Court and remitted to the district court on remand—namely, whether Section 5 requires denial of preclearance of a plan enacted with a discriminatory but nonretrogressive purpose—the court stated, "We are not certain whether or not we have been invited to answer the question the Court left for another day, but we decline to do so in this case." App. 3a. The majority also remarked that the record in this case "will not support a conclusion that extends beyond the presence or absence of retrogressive intent." *Ibid.* Although the majority stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose,'" it believed that "those imagined facts are not present." App. 3a-4a. Thus, the majority addressed only whether the Board had enacted the

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part) (agreeing with Justice Breyer on that point). Justice Breyer observed that "to read § 5's 'purpose' language to require approval of [a discriminatory, but nonretrogressive plan], even though the jurisdiction cannot provide a neutral explanation for what it has done, would be both to read § 5 contrary to its plain language and also to believe that Congress would have wanted a § 5 court (or the Attorney General) to approve an unconstitutional plan adopted with an unconstitutional purpose." App. 59a. Justice Stevens found it "inconceivable that Congress intended to authorize preclearance of changes adopted for the sole purpose of perpetuating an existing pattern of discrimination." App. 76a.

plan with the intent to retrogress. It did not address whether the evidence demonstrated that the School Board had enacted the plan with the purpose of maintaining an electoral system that unconstitutionally dilutes the votes of blacks in the Parish, nor did it apply the *Arlington Heights* framework to analyze evidence of such a purpose to dilute blacks' votes.

The court adhered to its previous view that the Board's adoption of the Police Jury plan was supported by two "legitimate, non-discriminatory motives": the Board's belief that the plan would be easily precleared (because it had already been precleared by the Attorney General for use in Police Jury elections) and its "focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would." App. 5a. Those two motives, the court concluded, were sufficient to establish a "prima facie case for preclearance." *Ibid.*

The majority then considered, under the rubric of *Arlington Heights*, *supra*, factors that might be relevant to establish the Board's retrogressive intent. First, it considered whether there was evidence that the plan "bears more heavily on one race than another." App. 5a. It found that factor inconclusive, because, having limited its analysis to evidence of retrogressive intent, it could not find evidence that "the Jury plan bears more heavily on blacks *than the pre-existing plan*," *ibid.* (emphasis added); even if the 1992 plan was dilutive of black voting strength, it was no *more* dilutive than the previous plan, App. 5a-6a. As for the historical background to the Board's adoption of the 1992 plan, the court acknowledged that this history, including the Board's history of resistance to school desegregation, provided "powerful support for the proposition that [appellee] in fact resisted adopting a redistricting plan that would have created majority black districts." App. 6a-7a. But, the court stressed, all that history proved only "a tenacious determina-

tion to maintain the status quo. It is not enough to rebut the School Board's prima facie showing that it did not intend retrogression." App. 7a. Similarly, the sequence of events leading up to the adoption of the plan "does tend to demonstrate the school board's resistance to the [NAACP plan]," and evidence of the Board's deviation from its normal practices "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," but neither established retrogressive intent. App. 7a.

Judge Kessler again dissented. App. 12a-27a. She "remain[ed] convinced that the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose," App. 12a (internal quotation marks omitted), and that the Board's "proffered reasons for acceptance of the Police Jury plan are clearly pretextual," App. 15a. She agreed with the government that evidence of a discriminatory, albeit nonretrogressive, purpose requires denial of preclearance under Section 5; otherwise, "we would commit ourselves to granting § 5 preclearance to a resistant jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength." App. 17a (internal quotation marks omitted). After reviewing evidence of vote dilution in Bossier Parish, Judge Kessler concluded that "[i]t would be impossible to ignore the weight and the relevance of this § 2 evidence to the School Board's intent to dilute the voting strength of blacks in Bossier Parish." App. 22a-23a. And she reiterated her previous conclusion, based on application of the *Arlington Heights* framework to the facts of this case, that "the only conclusion that can be drawn from the evidence is that [appellee] acted with discriminatory purpose." App. 23a (brackets omitted).

THE QUESTION PRESENTED IS SUBSTANTIAL

In the face of evidence that Bossier Parish School Board enacted its 1992 election plan in order to entrench a status quo that denies black citizens of the Parish an equal opportunity to elect representatives of their choice and to hinder improvement in the political position of blacks in the Parish, the district court precleared the plan because the record did not demonstrate that the Board intended to make the position of blacks worse than before. Thus, the district court effectively concluded that a voting change should be precleared even if the enacting covered jurisdiction adopted the change with the purpose of perpetuating an election system that unconstitutionally dilutes racial minorities' votes. Because the district court's ruling rests on a fundamental misconception about the scope of Section 5 of the Voting Rights Act and threatens seriously to impair enforcement of the Act, this Court should note probable jurisdiction.

1. Section 5 of the Voting Rights Act of 1965 prohibits a covered jurisdiction from implementing a new voting plan unless it first obtains a declaratory judgment from the District Court for the District of Columbia, or an administrative determination from the Attorney General, that the new procedure "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. When it is only the effect of a voting plan, and not its purpose, that may bar preclearance, this Court has held that, for preclearance to be denied, the plan must do more than continue a pre-existing abridgment of the right to vote on account of race; it must make things worse—it must have a retrogressive effect. App. 33a-45a. But when a voting plan has the *purpose* of "denying or abridging the right to vote" on account of race, and in fact accomplishes that purpose by perpetuating an electoral system that unconstitutionally dilutes the votes of

racial minorities, the plain language of the statute precludes enforcement of the plan.

This Court has consistently ruled, in accordance with that statutory language, that a voting plan is not entitled to preclearance if it was enacted with the intent to discriminate against racial minorities, and that the prohibited discriminatory purpose preventing preclearance is not limited to an intent to make the position of racial minorities *worse*. Most recently, in *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987), the Court denied preclearance to the annexation, by a city with an all-white population, of two parcels of land, one vacant and one inhabited only by a few whites. The Court affirmed the district court's ruling that the City of Pleasant Grove had failed to show that its annexations were untainted by a discriminatory purpose, *id.* at 469 even though it was agreed that the change could not possibly have been retrogressive of the position of black voters in the City at the time of the annexation, since there were no such black voters there, *id.* at 470-471. The Court squarely rejected the contention that "an impermissible purpose under § 5 can relate only to present circumstances," *id.* at 471, and affirmed the denial of preclearance on the basis of the City's "impermissible purpose of minimizing *future* black voting strength," *id.* at 471-472 (emphasis added). "One means of thwarting this process [of black political empowerment]," the Court held, "is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote *in advance*. This is just as impermissible a purpose as the dilution of *present* black voting strength." *Id.* at 472 (emphasis added).[7]

[7] In reaching that conclusion, the Court rejected the argument, advanced in dissent, that, "for a city to have a discriminatory purpose within the meaning of the Voting Rights Act, it must intend its action to have a retrogressive effect on the voting rights of blacks." *City of Pleasant Grove*, 479 U.S. at 474 (Powell, J., dissenting); see *id.* at 471 n.11 (opinion of the Court, rejecting dissent's position).

Similarly, in *City of Richmond* v. *United States*, 422 U.S. 358 (1975), the Court concluded that, if an annexation plan was motivated by a discriminatory purpose, it must be denied preclearance, even if the plan does not have a prohibited effect on minorities' franchise. Although the Court concluded in that case that the annexation plan did not have a discriminatory effect on the position of minorities, it ruled that the inquiry could not stop at that point, because the district court had found that the annexation plan "was infected by the impermissible purpose of denying the right to vote based on race through perpetuating white majority power to exclude Negroes from office through at-large elections." *Id.* at 373. The Court remanded for further proceedings on the issue of the City of Richmond's intent, and it stressed that, even though the effect of the annexation might have been permissible, nonetheless "[a]n official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color." *Id.* at 378.

This Court's summary affirmance of the district court's denial of preclearance in *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), also establishes that a voting change must be denied preclearance if it was enacted with a discriminatory purpose, even if that purpose was not necessarily retrogressive, *i.e.*, intended to make the position of minorities worse. The redistricting plan at issue in *Busbee* was concededly not retrogressive in effect; indeed, it increased black voting strength. 549 F. Supp. at 516. The district court, however, relying upon evidence of Georgia's

intent to avoid the creation of a majority-black district in the Atlanta area, denied Section 5 preclearance. *Id.* at 516-518. The court explained that the redistricting plan was "being denied Section 5 preclearance because State officials successfully implemented a scheme designed to minimize black voting strength to the extent possible, [and] the plan drawing was not free of racially discriminatory purpose." *Id.* at 518. It therefore denied preclearance based squarely on its finding that Georgia had acted with a discriminatory, but not retrogressive, intent.

On its appeal from the district court's judgment, the State included the following question in its jurisdictional statement: "Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act." 82-857 Juris. Stmt. I. The State also argued that, "[a]bsent a purpose to diminish the existing level of black voting strength or to despoil theretofore enjoyed voting rights, [a voting change] cannot have a discriminatory purpose within the meaning of Section 5." *Id.* at 22. In response, the government noted that "[t]he core of [the State's] argument is that the only discriminatory purpose that violates Section 5 is a purpose to * * * cause retrogression," and argued that this reading of Section 5 was foreclosed by *City of Richmond, supra.* 82-857 Mot. to Aff. 5-6 & n.6. Thus, this Court's summary affirmance in *Busbee* necessarily rejected the contention that a voting plan enacted with a nonretrogressive, yet discriminatory, purpose may be precleared and "prevent[s] lower courts from coming to opposite conclusions on [that issue]." *Mandel* v. *Bradley*, 432 U.S. 173, 176 (1977).

In addition, in *Beer* v. *United States*, 425 U.S. 130, 141 (1976), the Court stated that even an ameliorative election

plan can violate Section 5 if it "so discriminates on the basis of race or color as to violate the Constitution." That part of the Court's decision in *Beer* was expressly noted with approval in the definitive Senate Report accompanying Congress's 1982 extension of Section 5 without change. See S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982).[8] Congress's reenactment of Section 5 "without changing its applicable standard," App. 42a, amounts to a codification of the Court's reading of Section 5 in *Beer*. See also *City of Port Arthur* v. *United States*, 459 U.S. 159, 168 (1982) (even if electoral scheme might reflect political strength of a minority group, "the plan would nevertheless be invalid [under Section 5] if adopted for racially discriminatory purposes").

The Court's decisions in these cases are fully consistent with Congress's overarching purpose in enacting and extending Section 5, which was to give effective protection to the constitutional right against purposeful racial discrimination in voting, secured by the Fifteenth Amendment. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 325-326 (1966); *City of Rome* v. *United States*, 446 U.S. 156, 173-178 (1980). Congress required certain jurisdictions to obtain preclearance of their voting changes precisely because those jurisdictions had a "demonstrable history of intentional racial discrimination in voting" in violation of the Fifteenth Amendment, and because their voting changes carried a "risk of purposeful discrimination." *Id.* at 177. Thus, although there has been disagreement over "*how far beyond*

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[8] There was no conference report on the 1982 extension of the Voting Rights Act; the House of Representatives adopted the version of the legislation passed by the Senate. See 128 Cong. Rec. 14,933-14,940 (1982). The Court has described the Senate Report as the "authoritative source" of the legislative history for the 1982 extension of the Act. *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986).

the Constitution's requirements Congress intended [Section 5] to reach," this Court has never expressed doubt that Congress intended Section 5's preclusion of discriminatory voting changes "to reach *as far as* the Constitution itself." App. 57a (Breyer, J.) To hold otherwise would be to conclude that Section 5--one of the federal government's principal weapons in its arsenal against unconstitutional racial discrimination in voting, enacted by Congress under its authority to enforce the Fifteenth Amendment because previous methods of protecting voting rights had proven ineffective (*City of Rome*, 446 U.S. at 174)--does not in fact reach long-entrenched racial discrimination in voting that violates that Amendment.

It is particularly implausible that Congress would have intended that the Attorney General give preclearance to voting changes enacted with a racially discriminatory purpose. Congress enacted Section 5 because case-by-case litigation by the Justice Department against unconstitutional discrimination in voting had proven insufficient; jurisdictions affected by judgments outlawing a particular device had simply switched to other discriminatory mechanisms not covered by the decree. *South Carolina* v. *Katzenbach*, 383 U.S. at 309, 313-315; see also S. Rep. No. 417, *supra*, at 5. In Section 5, Congress gave the Attorney General the means to ensure that one discriminatory election system does not follow another. In 30 years of enforcement of the Voting Rights Act, the Department of Justice has *always* read Section 5 to require covered jurisdictions to show that their voting changes were enacted without an unconstitutionally discriminatory purpose, and it has *never* limited its purpose analysis on preclearance review to a search for "retrogressive intent." The Attorney General's published procedures for Section 5 submissions do not even recognize the concept of "retrogressive intent," but rather make clear that "the Attorney General will consider whether the change is free of

discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution." 28 C.F.R. 51.55(a). That longstanding and consistent construction of Section 5 by the Attorney General is entitled to "particular deference" in light of her "central role" in administering Section 5, see *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 39 (1978), and a holding to the contrary of that construction would effect a fundamental change in the operation of the Act.

2. Under the principles outlined above, the district court's preclearance of the Police Jury plan was legally erroneous. Despite this Court's instruction that "[t]he existence of such a [non-retrogressive, but nonetheless discriminatory] purpose, and its relevance to § 5, are issues to be decided on remand," App. 46a, the district court declined to decide whether the Board had acted with such a purpose, and instead limited its inquiry to "whether the record disproves [appellee's] retrogressive intent in adopting the Jury plan," App. 4a, a claim the government had never made. The district court's erroneous truncation of its legal analysis led it improperly to preclear the 1992 plan, notwithstanding its own factual findings and the underlying stipulated record, which plainly support, if they do not compel, a conclusion that the Board acted with discriminatory intent in adopting that plan.

First, the district court's own evaluation of the Board's motivation for adopting the Police Jury plan leads to the conclusion that the Board acted with a discriminatory purpose. The district court readily acknowledged that the Board was motivated by "a tenacious determination to maintain the status quo." App. 7a. It also accepted that the record "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral

franchise." *Ibid.* The district court's previous decision in this case also recognized that the Board had initially disliked the Police Jury plan, for valid reasons, and that it turned to that plan only after the redistricting process "began to cause agitation within the black community." App. 106a. Thus, while the district court characterized the 1992 plan as a "close port" available in a "storm," *ibid.*, the "storm" was merely the Board's realization that the black community was seeking improvement in its political position, something the Board was determined to oppose.

Second, the record amply supports a conclusion that the Board adopted the Police Jury plan in order to prevent any advance in the political position of blacks—as the district court would surely have found, had it engaged in the proper analysis of the Board's intent under the well-settled framework of *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-267 (1977).[9] Under the *Arlington Heights* framework for evaluating intent, the "important starting point" is whether the impact of the official action "bears more heavily on one race than another." *Id.* at 266. As this Court noted in its prior opinion in this case, a "jurisdiction that enacts a plan having a dilutive impact [on blacks' votes] is more likely to have acted with a discriminatory intent." App. 47a. On remand, it was undisputed that the Police Jury plan had a dilutive impact on blacks' exercise of the franchise; the Board conceded in its brief on remand that "the School Plan did dilute black voting strength." Board Br. 21 (filed Oct. 23, 1997). See also App. 201a-206a (stipulations establishing that white majority in

[9] As this Court explained in its prior opinion in this case, *Arlington Heights* has served as the framework for examining discriminatory purpose in equal protection cases and "has also been used, at least in part, to evaluate purpose in [the Court's] Section 5 cases." App. 48a-49a (citing *City of Pleasant Grove*, and *Busbee*, *supra*).

Parish usually votes sufficiently as a bloc to defeat black minority's preferred candidate).

Arlington Heights also instructs that the historical background of a decision is particularly relevant "if it reveals a series of official actions taken for invidious purposes." 429 U.S. at 267; see also *Rogers* v. *Lodge*, 458 U.S. 613, 625 (1982). The district court did not doubt that the Board's history included a litany of actions taken for a discriminatory purpose, most notably "the school board's resistance to court-ordered desegregation" and its "failure to * * * maintain a bi-racial committee to recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." App. 7a (internal quotation marks and citation omitted). It found that history irrelevant, however, because it proved at most "a tenacious determination to maintain the status quo," rather than retrogression, *ibid.*—even though that status quo was the vestige of *de jure* segregation in the Parish's public schools, and the denial of an equal opportunity for black voters to elect representatives of their choice.

Arlington Heights holds further that substantive changes in a decisionmaker's position are relevant "particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached." 429 U.S. at 267. The district court indeed found "[e]vidence in the record tending to establish that the board departed from its normal practices" in adopting the 1992 plan. App. 7a. Under "normal practices," the Board surely would not have rushed to adopt a redistricting plan with two districts that pitted incumbents against each other, and two other districts that contained no incumbent. See App. 178a. It is therefore unsurprising that the Board initially found the Police Jury plan unsuitable for its purposes and adopted it only upon realizing that it provided the only readily available plan to

prevent improvement in the political position of blacks in the Parish.[10]

The district court's cursory statement that "[it] can imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here" (App. 3a-4a) is unsupported—and unsupportable—by any analysis of the *Arlington Heights* factors. As Judge Kessler correctly pointed out, the majority "examine[d] each of the *Arlington Heights* factors * * * only for the purpose of finding evidence of retrogressive intent." App. 24a. Thus, the majority followed most of its findings establishing that the Board did not want blacks in the Parish to improve their voting strength with a statement that such evidence did not show the intent to retrogress. See pp. 13-14, *supra*. The lower court's failure to apply the *Arlington Heights* framework to the broader question of discriminatory intent was error.

3. The district court's decision to preclear the 1992 plan cannot be sustained by its determination that two of the Board's proffered explanations for adopting that plan—"guaranteed preclearance" by the Attorney General and "easy implementation (because no precinct lines would need redrawing)"—were legitimate and nondiscriminatory reasons. See App. 5a, 106a. First, the record clearly demonstrates that these reasons were pretextual. As Judge Kessler pointed out, proper application of the *Arlington Heights* framework to the facts of this case "leads to one conclusion: the Board adopted the Police Jury plan * * * to ensure that no majority-black districts would be created." App. 15a.

[10] As for the *Arlington Heights* factor of contemporaneous statements by decisionmakers (429 U.S. at 267), the district court noted evidence that some Board members were hostile to black representation on the Board, but it reaffirmed its earlier conclusion that those statements did not establish discriminatory intent. App. 7a-8a, 109a-111a. The government did not contend that those statements, standing alone, sufficed to prove discriminatory intent; rather, we argued, as Judge Kessler wrote in her initial dissent, that, when "considered in the context of the School Board's discriminatory past," "th[ose] statements add further proof of improper motive," and "it seems fair to conclude that at least some School Board Members were openly 'hostile' to black representation on the school board." App. 133a.

But even if the district court were correct that the Board's proffered reasons for its adoption of the 1992 plan were not pretextual, the court's decision to preclear the plan would still be erroneous as a matter of law, because the record clearly demonstrates that the Board *also* acted with a discriminatory intent in adopting the 1992 plan. A jurisdiction seeking preclearance has the burden to prove "the *absence* of discriminatory purpose" on its part. *City of Rome*, 446 U.S. at 172 (emphasis added); *City of Pleasant Grove*, 479 U.S. at 469. Because the presence of a discriminatory purpose requires denial of preclearance, a jurisdiction's election plan is not entitled to preclearance if a discriminatory purpose significantly contributed to the adoption of the plan, even if nondiscriminatory reasons also played a part in motivating the jurisdiction. The fact that the jurisdiction may have had some legitimate reason for enacting the plan does not permit the court to ignore its discriminatory motivation in doing so.

The Board's hope for "guaranteed preclearance" of the 1992 plan does not disprove a discriminatory purpose on its part. First, the hope for guaranteed preclearance might have been equivalent to a discriminatory purpose. Given the Board's history of racial discrimination, it would be reasonable to conclude that the Board turned to the Police Jury plan in part because it expected that the plan's "guaranteed preclearance" would enable it to continue in place a discriminatory status quo without detection or

objection by the Attorney General. Second, the record shows that, even if guaranteed preclearance was an important and race-neutral reason motivating the Board, it was not the only significant factor that induced the Board to adopt the Police Jury plan. Since that plan had been precleared for Police Jury elections on July 29, 1991, the School Board could have adopted it at its September 5, 1991, meeting, yet it continued to consider adopting another plan for more than a year. See pp. 6-7, *supra*. In fact, the Board turned to the Police Jury plan only after the position of the black community had become apparent. See pp. 7-8, *supra*. There must, therefore, have been another motivating factor behind the Board's decision, which can only be explained as the Board's desire to prevent blacks from making effective use of their voting strength.

Similarly, concerns over splitting precincts did not persuade the Board to adopt the Police Jury plan either initially or during its efforts to draw a plan that satisfied its interests regarding incumbencies and school locations. Instead, the Board abruptly abandoned that search, more than two years before the next election, only when the NAACP plan demonstrated the possibility of drawing majority-black districts in the Parish. The Board also made no attempt to examine measures that would have reduced the number of precinct splits in a plan that would have provided for some black electoral opportunity. See App. 180a. Thus, even if one favorable feature about the Police Jury plan was that it did not require precinct splitting, that does not mean that the Board acted without a discriminatory purpose in adopting it.

4. For the reasons we have explained, the district court's evaluation of the Board's adoption of its redistricting plan was legally flawed. Because of the importance of those legal errors for the administration of Section 5, plenary review by this Court is warranted. The district court's decision to pre-

clear an election plan without deciding whether it was infected by an unconstitutional, racially discriminatory motive (and in the face of evidence that it was) is a significant turn in Section 5 jurisprudence. Future three-judge panels of the District Court for the District of Columbia hearing preclearance cases under Section 5 are likely to follow the analysis of the lower court in this case. See App. 97a-98a n.9 (district court noting that prior decisions of three-judge preclearance panels are particularly persuasive because, "in this curious corner of the law," only this Court and three-judge panels of the District Court for the District of Columbia may consider these questions). Because preclearance cases may be brought only in the District Court for the District of Columbia, there is no opportunity for further percolation of these issues in other federal courts, and because appeals from such cases lie only to this Court, only this Court can correct the legal errors of the district court in this case.

Moreover, because the existence of a discriminatory purpose is potentially an issue in *every* preclearance submission, the question whether that prohibited purpose is limited to retrogressive intent is of central importance to the Attorney General's administration of Section 5. The existence *vel non* of a discriminatory purpose is particularly important in the Attorney General's evaluation of redistricting plans, and will undoubtedly be a major focus of submissions requesting preclearance of reapportionment plans following the upcoming decennial census. The significance of the question presented for the administration of Section 5 therefore warrants this Court's plenary consideration.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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SEPTEMBER 1998

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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1997

JANET RENO, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPENDIX TO THE JURISDICTIONAL STATEMENT

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495 (LHS (USCA), GK, JR)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, ATTORNEY GENERAL, DEFENDANT,
GEORGE PRICE, ET AL., INTERVENOR-DEFENDANTS

[Filed: May 1, 1998]

Before: SILBERMAN, Circuit Judge, and KESSLER and ROBERTSON, District Judges.

Opinion for the Court filed by Judge ROBERTSON

ROBERTSON, District Judge: This case is before us on remand from the United States Supreme Court for further proceedings consistent with the Court's decision of May 12, 1997, 117 S. Ct. 1491. The parties have agreed that the record should not be reopened for the taking of additional evidence,[1] but they have sub-

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[1] Plaintiff nevertheless argued in a reply memorandum that we should take judicial notice of the results of the 1990 school board election that took place subsequent to our original judgment. Why the school board would at first decline our invita-

mitted additional briefs. After reviewing the record in compliance with the Supreme Court's opinion, we adhere to our decision of November 18, 1995 granting preclearance under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, to the Bossier Parish School Board's redistricting plan ("the Jury plan"). The facts bearing upon our conclusion are all set forth in the opinions issued with our original judgment, 907 F. Supp. 434 (D.D.C. 1995). The reasons for our decision to adhere to that judgment are set forth below.

In compliance with the Supreme Court's instructions, we have considered the relevance of certain "§ 2 evidence" in evaluating the school board's intent for § 5 purposes. We have considered whether the plan in question "has a dilutive impact . . . [making] it 'more probable' that the jurisdiction adopting that plan acted with an intent to retrogress than 'it would be without the evidence.'" 117 S. Ct. at 1501. We have applied the multi-part test articulated in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S. Ct. 555 (1977), to evaluate the school board's purpose. And, we have "address[ed] appellants' additional arguments that [we] erred in refusing to consider evidence that the board was in violation of an ongoing injunction to remedy any remaining vestiges of [a] dual [school] system." 117 S. Ct. at 1503 (internal quotations omitted).

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tion to reopen the record and then ask us to take judicial notice of the election results is a mystery, but in any case we decline to take judicial notice of the election results. Were we to consider the election results at all, we would need more information about them.

I.

Before carrying out the tasks assigned to us on remand, and particularly before applying the *Arlington Heights* test to the record before us, it is necessary to decide what question we are answering. The Supreme Court was clearly interested in our view as to whether considering all of the evidence, the school board has carried its burden of proving that it did not intend to retrogress. The Court "le[ft] open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." Justice O'Connor's opinion for the Court suggested that we might consider that question on remand.[2] Justices Breyer and Ginsburg were clearly uncomfortable with leaving the question for another day, "for otherwise the District Court will find it difficult to consider the evidence that we say it must consider," 117 S. Ct. at 1504.

We are not certain whether or not we have been invited to answer the question the Court left for another day, but we decline to do so in this case, because the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent. We can imagine a set of facts that would establish a "non-retrogressive, but nevertheless discriminatory, purpose," but those imagined facts are

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[2] "[W]e do not, contrary to Justice STEVENS' view . . . necessarily assume that the Board enacted the Jury plan with some non-retrogressive, but nevertheless discriminatory, 'purpose.' The existence of such a purpose, and its relevance to § 5, are issues to be decided on remand." 117 S.Ct. at 1491.

not present here. The question we will answer, accordingly, is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan.

We must next decide what we mean by "retrogression." The controlling law is clear—up to a point. "Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan . . . [citation omitted]. It also necessarily implies that the jurisdiction's existing plan is the benchmark. . . ." 117 S. Ct. at 1497. Intervenor argues that to search for retrogression in a jurisdiction that has never elected a black person to its school board is a fool's errand, because "it would appear impossible to retrogress from zero." Brief on remand of defendant-intervenors, at 35. But the test of retrogressive intent, in our view, need not depend on the number of black persons elected. The language of *Beer v. United States*, 425 U.S. 130, 96 S. Ct. 1357 (1976), is just as applicable to the "purpose" inquiry as to the "effect" inquiry. Thus, a plan has an impermissible purpose under § 5 if it is intended to "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, 425 U.S. at 141, 96 S. Ct. at 1364. That test is broad enough to identify "retrogression" regardless of the outcome of an election, if (to imagine an example not present in this case) polling places were located so that they are less convenient to black voters than before the change, or if (for an example closer to the facts of this case) downward adjustments were made in the percentage of black voters in one or more districts.

II.

In applying the standard set forth above to the record of this case we adhere to our earlier attempt to fashion a method of analysis, set forth in our earlier opinion, 907 F. Supp. at 445-446, that acknowledges the difficulty of the school board's burden to prove the *absence* of discriminatory intent. Thus, we begin again with the observation that the school board's resort to the pre-cleared Jury plan (which it mistakenly thought would easily be pre-cleared) and its focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would, were "legitimate, non-discriminatory motives" entitling the school board to a finding that it had presented a *prima facie* case for preclearance.

The first *Arlington Heights* factor is "the impact of the official action—whether it 'bears more heavily on one race than another.'" 429 U.S. at 266, 97 S. Ct. at 564. In this case, the question is whether the Jury plan bears more heavily on blacks than the pre-existing plan. The intervenor, referring to stipulations of record, argues that

> the board knew that the black population was growing in the northern portion of the county, where District 4 of the 1980's plan already had a black voting age population of 42.1 percent. . . . Faced with that information . . . the board chose a plan that extended District 4 to the southeast and decreased the black voting age population to 40.9 percent. . . . The board offered no race-neutral explanation for these changes. Therefore the board failed to carry its burden of proving that such changes were not intended to have their

> forseeable effect: 'to worsen the position of minority voters.'

Brief on Remand of Defendant-Intervenors, at 36-37. That percentage shift in dilution, even though it applies to only one of the twelve districts in question, might indeed be enough to rebut the non-discriminatory reasons advanced by the school board, were it not for the fact that the parties have stipulated the point away, agreeing that this reduction, and the reduction of the black population in another district from 36.9 percent to 36.1 percent, are *de minimis*. Stip. ¶ 252.

The intervenor points to a number of other allegedly dilutive impacts of the Jury plan in support of its discriminatory intent argument: that some of the new districts have no schools, that the plan ignores attendance boundaries, that it does not respect communities of interest, that there is one outlandishly large district, that several of them are not compact, that there is a lack of contiguity, and that the population deviations resulting from the jury plan are greater than the limits (± 5 %) imposed by Louisiana law. Two of those points—failure to respect communities of interest and cutting across attendance boundaries—might support a finding of retrogressive intent, if there were any corroborating evidence that the school board had deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote. In the absence of such evidence in this record, however, the point is too theoretical, and too attenuated, to be probative.

The second *Arlington Heights* factor is the historical background of the school board's adoption of the jury plan. That background is summarized at 907 F.

Supp. 455-56 and provides powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts. Part of that history is the school board's resistance to court-ordered desegration, and particularly its failure to comply with the order of the United States District Court in *Lemon v. Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd* 370 F.2d 847 (5th Cir. 1967), *cert. denied*, 388 U.S. 911 (1967), that it maintain a bi-racial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Stip. ¶ 111. All of that history is admissible to prove intent. The intent it proves in this case, we think, is a tenacious determination to maintain the status quo. It is not enough to rebut the School Board's *prima facie* showing that it did not intend retrogression.

The remaining *Arlington Heights* factors do not require extended discussion. The specific sequence of events leading up to the school board's decision to adopt the jury plan is discussed in our previous decision at 907 F. Supp. at 448. It does tend to demonstrate the school board's resistance to the NAACP plan; it does not demonstrate retrogressive intent. Evidence in the record tending to establish that the board departed from its normal practices, *see* 907 F. Supp. at 457, establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise, but is not evidence of retrogressive intent. As for the contemporary statements of participants in the board's decision and other de-

tails of legislative history, the several statements made by school board members were discussed at 907 F. Supp. 447-448 and 907 F. Supp. 459. They do not establish retrogressive intent.

SILBERMAN, *Circuit Judge, concurring*: The Supreme Court remanded part of this case primarily because it was uncertain whether we had considered the "dilutive impact" of the Board's redistricting plan as relevant evidence in determining whether it had been adopted for a discriminatory purpose within the meaning of § 5. The term "dilution" has become a rather confusing word of art in § 2 cases, 42 U.S.C. § 1973. *See Abrams v. Johnson*, 117 S. Ct 1925, 1935-38 (1997); *see also Thornburg v. Gingles*, 478 U.S. 30 (1986). The Supreme Court never explicitly defined what it meant by evidence of "dilutive impact"—a phrase that neither the Court, any court of appeals, nor this district court has used in connection with § 2 before—in this case. A careful reading of the opinion suggests, however, that the Court meant only that the plan the Board adopted had less majority black districts than that which could have been created. *See Reno v. Bossier Parish Sch. Bd.*, 117 S. Ct. 1491, 1503 (1997). We, of course, never rejected such evidence; it was the premise of the government's case. "Here defendant argues that the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts." *Bossier Parish Sch. Bd. v. Reno*, 907 F. Supp. 434, 449 (D.D.C. 1995).

To be sure, we did say we would "not permit § 2 evidence to *prove* discriminatory purpose. . . ." *Id.* at 445 (emphasis added). But we never said that any evidence that would be relevant in a § 2 case would be excluded in a § 5 case. Indeed, in footnote 6 we specifically excluded "evidence relevant *only* to [a] § 2 inquiry," *id.* at 445 n.6, necessarily implying that some evidence could go to both. The Supreme Court

itself recognized that only "some of this '§ 2 evidence' may be relevant" in a § 5 case, *Reno*, 117 S. Ct. at 1501, and, furthermore, "[t]hat evidence of a plan's dilutive impact may be relevant to the § 5 purpose inquiry does not, of course, mean that such evidence is dispositive of [proves] that inquiry." *Id.* at 1502.

The phrase "dilutive impact" was not used in our opinion—nor for that matter in the dissent—because it was not an issue in the case. That the NAACP offered an alternate plan whereby more majority black districts would be created was undisputed. (In that regard, I believe the government's filings in the Supreme Court were deceptive .)[3] The real issue in the case was whether Bossier Parish had an affirmative obligation to create the maximum number of black majority districts. I take it the Supreme Court agrees with us that it did not. "At one point, the District Court correctly stated that 'the adoption of one nonretrogressive plan rather than another nonretrogressive plan that contains more majority-black districts cannot *by itself* give rise to the inference of discriminatory intent.'" *Id.* at 1503, *quoting Bossier Parish*, 907 F. Supp. at 450.

As for the *Arlington Heights* framework which the Supreme Court said should be applied to determine whether the Board had a discriminatory purpose, it should be readily apparent that our previous opinion,

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[3] In its brief on remand, the government, only in passing, refers to the plan's "dilutive impact." Plaintiff asks us to take judicial notice that two blacks have been elected to the School Board since we granted preclearance of the plan. While I doubt that we may take notice of this, it seems anomalous to emphasize, as Judge Kessler does, that no black has ever been elected to the Board. *See* Dissent at 8.

without citing the case, did just that. We carefully considered "the historical background of the [jurisdiction's] decision"; "[t]he specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence"; and "[t]he legislative or administrative history, especially . . . [any] contemporary statements by members of the decisionmaking body." *Id.* at 1503, *quoting Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 267-68 (1976). The Court does not indicate that our review of that evidence was in any way inadequate except that it notes that we did not indicate how we viewed the claim that Bossier Parish was in supposed violation of an injunction issued by the western district of Louisiana to unify the school system. We do so now.

KESSLER, *District Court Judge, dissenting.*

This case is before us on remand from the United States Supreme Court for further proceedings consistent with its May 12, 1997 decision in *Reno v. Bossier Parish Sch. Bd., et al.*, 117 S. Ct. 1491. Upon further review and consideration of the record in accordance with the Supreme Court's mandate, I am forced once again to conclude that I cannot in good conscience agree with the result reached by my colleagues. Instead, I remain convinced that "the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose", *Bossier Parish Sch. Bd. v. Reno, et al.*, 907 F. Supp. 434, 463 (D.D.C. 1995) (Kessler, J., dissenting), and should thus be denied preclearance under the Voting Rights Act of 1965, 42 U.S.C. § 1973c ("Voting Rights Act").

I.

In its opinion, the Supreme Court confirmed that "a violation of § 2 [of the Voting Rights Act] is not grounds in and of itself for denying preclearance under § 5 [of the Act]." 117 S. Ct. at 1500. The Court stated that nevertheless, such "[§ 2] evidence of a plan's dilutive impact may be relevant to our § 5 purpose inquiry". 117 S. Ct. at 1502. The Court emphasized that § 2 evidence, while potentially relevant to the § 5 purpose inquiry, is not dispositive of that inquiry. Consequently, the Court directed us to consider and weigh the relevance of "evidence of the dilutive impact of the Board's redistricting plan". *Id.* at 1503.

The Supreme Court also directed us, in conducting our inquiry into the School Board's motivation, to

apply the framework articulated in *Arlington Heights v. Metro. Hous. Dev. Corp., et al.*, 429 U.S. 252 (1977). The *Arlington Heights* framework has been used both to evaluate "whether invidious discriminatory purpose was a motivating factor" in a government body's decisionmaking and also, "at least in part, to evaluate purpose in [the Court's] previous § 5 cases." 117 S. Ct. at 1502 (citing *City of Pleasant Grove v. United States*, 479 U.S. 462, 469-70 (1987)).

My colleagues have limited their § 5 purpose inquiry to a search for intent to retrogress and have declined to consider whether the § 5 inquiry ever extends beyond that search for retrogressive intent. I read the Supreme Court's mandate more broadly. The Supreme Court stated that, while it did not assume "that the Board enacted the Jury plan with some nonretrogressive, but nevertheless discriminatory, 'purpose'[, t]he existence of such a purpose, and its relevance to § 5, are issues to be decided on remand." 117 S. Ct. at 1501. Given the clarity of these words, I fail to see how we can avoid carrying out the Supreme Court's directive to (1) inquire into the existence of "some nonretrogressive, but nevertheless discriminatory, 'purpose'"; and (2) determine the relevance of such a purpose (should one exist) to our § 5 inquiry.

Finally, the Supreme Court directed us to address the government's arguments that the District Court "erred in refusing to consider evidence that the Board was in violation of an ongoing injunction" to attain a

unitary system of education in the Parish.[4] 117 S. Ct. at 1503.

II.

The majority finds that School Board has made out its prima facie case for preclearance. The School Board states that it adopted the Police Jury plan for at least two nondiscriminatory motives—the "plan offered the twin attractions of guaranteed preclearance and easy implementation". 907 F. Supp. at 447. To make out its prima facie case, "the School Board must demonstrate that the proposed change will have no retrogressive effect, and that the change was undertaken without a discriminatory purpose. Proof of nondiscriminatory purpose must include 'legitimate reasons' for settling on the given change." *Id.* at 446 (citing *Richmond v. United States*, 422 U.S. 358, 375 (1975).

I find that the reasons given by the School Board for adopting the Police Jury plan are not at all "legitimate". The majority, in its earlier opinion, conceded that the School Board did not favor the Police Jury plan until "the redistricting process began to cause agitation within the black community", 907 F. Supp. at 447, since the plan "wreaked havoc with the incumbencies of four of the [twelve] School Board members and was not drawn with school locations in mind." *Id.*

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[4] The injunction was imposed on the School Board after it was found liable for intentionally segregating the public schools. *See Lemon v. Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd* 370 F.2d 847 (5th Cir. 1967), *cert. denied* 388 U.S. 911. *See also Lemon v. Bossier Parish Sch. Bd.*, 421 F.2d 121 (5th Cir. 1969); *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400 (5th Cir. 1971).

The conclusions I reached in my original dissent are as valid now as they were then:

> The Policy Jury plan only became "expedient" when the School Board was publicly confronted with alternative plans demonstrating that majority-black districts could be drawn, and demonstrating that political pressure from the black community was mounting to achieve such a result. The common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest. This sequence of events of "public silence and private decisions," culminating in the Board's hasty decision, is evidence of the Board's discriminatory purpose.

907 F. Supp. at 457-58 (Kessler, J., concurring in part and dissenting in part) (footnote omitted).

The School Board has thus failed to establish a prima facie case that is "supported by 'credible and credited evidence'". 907 F. Supp. at 446 (citation omitted). Its proffered reasons for acceptance of the Police Jury plan are clearly pretextual. This conclusion alone permits us to deny preclearance to the School Board's plan.

A more thorough evaluation of the School Board's intent, under the purpose prong of § 5, only reinforces the necessity of this conclusion and outcome.

III.

The parties agree that the School Board's proposed redistricting plan will not have a retrogressive effect. Resolution of this case thus turns on whether the School Board can demonstrate by a preponderance of the evidence that it did not adopt the plan with an unlawful purpose. The Supreme Court left it to us to decide whether our "purpose" inquiry is limited to a search for retrogressive intent, or whether our inquiry should extend beyond that search.

The Voting Rights Act was enacted by Congress "to 'attac[k] the blight of voting discrimination' across the Nation." 117 S. Ct. at 1496-97 (quoting S. Rep. No. 97-417, 2d Sess., p. 4 (1982) U.S. Code Cong. & Admin. News 1982 pp. 177, 180; *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)). Before implementing a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting", a jurisdiction must first obtain either administrative preclearance from the Attorney General or judicial preclearance from the District Court for the District of Columbia. 42 U.S.C. § 1973c. Section 5 of the Act imposes on a jurisdiction the burden of proving that its proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. It is well-settled that a plan has an impermissible effect under § 5 only if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 117 S. Ct. at 1497 (quoting *Beer v. United States*, 425 U.S. 130, 141 (1970)). We must decide whether a plan has an impermissible purpose under § 5 *only* if the jurisdiction intends the plan to "lead to a retrogression", or if an impermissible purpose also includes a "nonretrogressive, but nevertheless discriminatory purpose".

The Supreme Court stated that "Congress enacted § 5, not to maintain the discriminatory status quo, but to stay ahead of efforts by the most resistant jurisdictions to undermine the Act's purpose of 'rid[ding] the country of racial discrimination.'" 117 S. Ct. at 1509 (Stevens, Souter, JJ., dissenting in part and concurring in part). If we were to deny preclearance under § 5 only to those new plans enacted specifically with a retrogressive purpose, however, we would commit ourselves to granting § 5 preclearance to a "resistant" jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength.

Since "a new plan enacted with the purpose of unconstitutionally diluting minority votes is an unconstitutional plan," 117 S. Ct. at 1505 (Breyer, Ginsburg, JJ., concurring in part and concurring in the judgment) (citations omitted), a construction of § 5 that limits its purpose inquiry to a search for retrogressive intent could require us to preclear nonretrogressive but *nevertheless unconstitutional* voting plans. Such a result is clearly inconsistent with the purpose of both the Voting Rights Act in general and § 5 in particular. Along with Justices Breyer and Ginsburg, I do not "believe that Congress would have wanted a § 5 Court (or the Attorney

General) to approve an unconstitutional plan adopted with an unconstitutional purpose." *Id.* at 1506.

I thus join Justices Breyer, Ginsburg, Stevens, and Souter in concluding that "the 'purpose' inquiry does extend beyond the search for retrogressive intent." *Id.* at 1505.

IV.

The Supreme Court stated that § 2 "evidence of the dilutive impact of the Board's redistricting plan" may be relevant in a § 5 proceeding to establish a jurisdiction's "intent to retrogress". *Id.* at 1501. As stated above, however, I find that our § 5 purpose inquiry should extend beyond a search for the jurisdiction's intent to retrogress; I will thus assess the relevance of § 2 evidence to establish not only whether the School Board acted with an intent to retrogress, but also whether it acted with the unconstitutional purpose of diluting minority voting strength. Thus, pursuant to the Court's mandate, I believe we must first consider evidence that would be relevant to the § 2 inquiry on dilutive impact, and second, determine the relevance of that evidence to our § 5 purpose inquiry.

Plaintiffs claiming vote dilution under § 2 must first establish that the racial group "is sufficiently large and geographically compact to constitute a majority in a single-member district". *Id.* at 1498 (citations omitted). In this case, the School Board received, in addition to the plan presented on September 3, 1992, two other plans demonstrating that "it is possible to draw majority-black districts in Bossier Parish which are fully consistent with traditional districting principles." *Bossier Parish Sch. Bd. v. Reno, et al.*, 907 F. Supp. 434, 454 n. 3 (D.D.C. 1995)

(Kessler, J., concurring in part and dissenting in part). Furthermore, the School Board has admitted that it is "obvious that a reasonably compact black-majority district could be drawn in Bossier City." *Id.* (quoting Stip. ¶ 36.)

Second, § 2 plaintiffs must establish that the group is "politically cohesive". In order "to ascertain whether minority members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates", the Supreme Court has directed courts to inquire into the existence of racially polarized voting. *Thornburg v. Gingles*, 478 U.S. 30, 56 (1986). Here, the Stipulations clearly demonstrate that Parish is racially polarized. 907 F. Supp. at 454 (citing Stip. ¶¶ 181-96). Such racial polarization indicates that blacks in Bossier Parish are a "politically cohesive" group.

Third, § 2 plaintiffs must establish that the white majority usually votes as a bloc to defeat the minority's preferred candidate. 117 S. Ct. at 1498 (citations omitted). Parties stipulate, in the record before us, that no black person has been elected to the Bossier Parish School Board despite the fact that 20.1% of the population is black.[5] (Stip.¶¶ 153, 5.) Stipulations

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[5] In his concurrence, Judge Silberman refers to the Plaintiff's request that we take judicial notice that two black individuals were elected to the School Board since the closing of the record before the first District Court opinion. It would be inappropriate in this case to take judicial notice of this fact. First, the Supreme Court explicitly denied the School Board's request to supplement the record in *Reno v. Bossier Parish School Board, et al.*, 517 U.S. 1154 (1996). Second, the parties

¶¶ 181-95 discuss racially polarized voting patterns in Bossier Parish. Analysis of several elections illustrated that, in at least two elections, "the black candidates were the choice of the black voters in these elections, but were not the choice of the white voters." (Stip. ¶ 186; *see also* Stip. ¶¶ 181-95.)

Fourth, plaintiffs claiming § 2 vote dilution "must also demonstrate that the totality of the circumstances supports a finding that the voting scheme is dilutive." 117 S. Ct. at 1498 (citing *Johnson v. DeGrandy*, 512 U.S. 997, 1011, (1994); *Gingles*, 478 U.S. at 50-51). *Gingles* spells out the typical factors which may be relevant to a totality analysis of a § 2 claim. 478 U.S. at 44-45. They include:

(1) "[T]he history of voting-related discrimination in the State or political subdivision". *Id.* at 44. Parties' Stipulations ¶¶ 213-47 discuss the extensive history of official and voting-related discrimination in Bossier Parish.

(2) "[T]he extent to which voting in the elections of the State or political subdivision is racially polarized". *Id.* at 44-45. As already noted, the Stipulations clearly demonstrate that voting in Bossier Parish is racially polarized. 907 F. Supp. at 454 (citing Stip. ¶¶ 181-96).

(3) "[T]he extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group". *Gingles*, 478 U.S. at 45. See, *e.g.*, Stip. ¶¶ 228-29, which discuss the implementation by the State of Louisiana in 1968 and

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specifically agreed in this remand that the record should not be reopened.

1971 of voting procedures, including the adoption of at-large elections and multi-member districts, which the Attorney General found diluted black voting strength.

(4) "[T]he exclusion of members of the minority group from candidate slating processes". *Gingles*, 478 U.S. at 45. We have no evidence indicating that black individuals have been excluded from candidate slating processes.

(5) "[T]he extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process". *Id.* at 45. The parties have stipulated that:

> Education, income, housing and employment are considered standard measures of socioeconomic status. These factors repeatedly have been found to translate into political efficacy . . . Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts. This lower socioeconomic status is traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens.

(Stip.¶¶ 198-99.)

(6) "[T]he use of overt or subtle racial appeals in political campaigns". *Gingles*, 478 U.S. at 45. We have no evidence demonstrating that racial appeals have been used in political campaigns.

(7) "[T]he extent to which members of the minority group have been elected to public office in the jurisdiction". *Id.* The record before us shows that no

black candidate has been elected to the Bossier Parish School Board. (Stip.¶ 153.)

The *Gingles* Court noted that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Id.* (quoting S.Rep. at 29, U.S. Code Cong. & Admin. News 1982, p. 207).

Finally, § 2 plaintiffs "must also postulate a reasonable alternative voting practice to serve as the benchmark "undiluted" voting practice." 117 S. Ct. at 1498 (citing *Holder v. Hall*, 512 U.S. 874, 881 (1994) (plurality opinion)). The School Board has been given several plans showing that it is possible to draw majority-black districts in Bossier Parish in a manner consistent with traditional districting principles. 907 F. Supp. at 454.

Having considered "evidence of the dilutive impact of the Board's redistricting plan", 117 S. Ct. at 1503, I conclude that it overwhelmingly demonstrates the following: the black voting population in Bossier Parish is sufficiently large and geographically compact to constitute a majority in at least two single-member districts; black voters are politically cohesive; the white majority votes sufficiently often as a bloc to enable it repeatedly to defeat the blacks' preferred candidates; and finally, the totality of the circumstances supports a finding that the School Board's plan is dilutive.[6]

It would be impossible to ignore the weight and the relevance of this § 2 evidence to the School Board's

[6] This conclusion is, of course, only reinforced by the School Board's concession that the "plan did dilute black voting strength." (Pl.'s Br. at 21.)

intent to dilute the voting strength of blacks in Bossier Parish.

V.

The Supreme Court has also directed us to apply the framework, articulated in *Arlington Heights v. Metro. Hous. Dev. Corp., et al.*, 429 U.S. 252 (1977), to evaluate the School Board's purpose in adopting the Police Jury plan. 117 S. Ct. at 1503.

In Part II of my initial dissent, I discussed in detail the *Arlington Heights* framework and applied it to this record. *See* 907 F. Supp. at 453-60 (Kessler, J., concurring in part and dissenting in part). Based on that analysis, I believed then, and for the same reasons still believe now, that:

> [T]he only conclusion that can be drawn from the evidence is that the Bossier School Board acted with discriminatory purpose. The adopted plan has a substantial negative impact on the black citizens of Bossier Parish. The sequence of events leading up to the decision show conclusively how the School Board excluded the black community from the redistricting process and rushed to adopt the Police Jury plan only when faced with an alternative plan that provided for black representation. The plan itself ignores and overrides a number of the School Board's normally paramount interests. And the statements of some School Board members certainly lend strength to the other evidence . . . We cannot blind ourselves to the reality of the situation and the record before us.

Id. at 460 (Kessler, J., concurring in part and dissenting in part).

The majority has, consistent with the Supreme Court's mandate, also applied the *Arlington Heights* analysis to the record. It examines each of the *Arlington Heights* factors, however, only for the purpose of finding evidence of retrogressive intent. This is far too limited and narrow an inquiry. Since our § 5 purpose inquiry should, in my opinion, extend beyond a search for retrogressive intent, so too should our *Arlington Heights* analysis.

In its analysis of the impact of the Jury plan[7] (the "important starting point" for assessing discriminatory intent under *Arlington Heights*), the majority states that the plan's failure to respect communities of interest and the fact that it cuts across attendance boundaries "might support a finding of retrogressive intent, *if there were any corroborating evidence that the school board had deliberately attempted* to break up voting blocks before they could be established or otherwise to divide and conquer the black vote." Majority Op. at 6-7 (emphasis added). I find nothing in *Arlington Heights* nor in the Supreme Court's opinion in *Bossier* that supports the imposition of the additional requirement of "corroborating evidence" of a jurisdiction's "deliberate[ ] attempt[ ] to . . . divide and conquer the black vote" before evidence of dilutive or disparate impact can be considered relevant to an *Arlington Heights* examination of purpose.

In considering the historical background of the School Board's decision, the majority found that the School Board has resisted court-ordered desegrega-

[7] Plaintiff concedes that "[t]he impact of the School Board plan does fall more heavily on blacks than on whites". (Pl.'s Br. at 12.)

tion and failed to comply with the Court's order in *Lemon v. Bossier Parish Sch. Bd.*, 240 F. Supp. at 709. The majority admits the existence of "powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts", and concluded that "[a]ll of that history . . . proves in this case, we think, [] a tenacious determination to maintain the status quo." What the majority overlooks or ignores is that the status quo which the School Board is so anxious to maintain is a discriminatory one. Furthermore, the record demonstrates that the School Board hopes to maintain that discriminatory status quo by unconstitutionally diluting black voting strength. Thus, the majority's conclusion (that the School Board acted with an intent to maintain the discriminatory status quo) leads to denial of preclearance to the Jury plan under the purpose prong of § 5.

The majority also finds that "[e]vidence in the record tending to establish that the board departed from its normal practices establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise, but is not evidence of retrogressive intent". Majority Op. at 8 (citations omitted). Such an "improvement in the position of racial minorities", however, is precisely what is necessary to redress the current discriminatory status quo in Bossier Parish. Limiting their inquiry to a search for retrogressive intent only permits my colleagues to all but concede that the School Board acted with a nonretrogressive but nevertheless discriminatory intent. They neverthe-

less grant preclearance under § 5 to the School Board's plan, even though "the purpose part of § 5 prohibits a plan adopted with the purpose of unconstitutionally diluting minority voting strength, whether or not the plan is retrogressive in its effect." 117 S. Ct. at 1506 (Breyer, Ginsburg, JJ., concurring in part and concurring in the judgment).

VI.

Finally, the Supreme Court directed us to "address [the Government's] additional arguments that [the District Court] erred in refusing to consider evidence that the Board was in violation of an ongoing injunction 'to remedy any remaining vestiges of [a] dual [school] system'". 117 S. Ct. at 1503.

My initial dissent considered this evidence and found it relevant since *Arlington Heights* states that "the historical background of the challenged decision" is properly part of the purpose inquiry. 429 U.S. at 267. Since 1965, the Bossier Parish School Board has been the defendant in *Lemon v. Bossier Parish School Board*, Civ.Act. No. 10,687 (W.D. La., filed Dec. 2, 1964). My dissent noted that, "[t]o this day, the School Board remains under direct federal court order to remedy any remaining vestiges of segregation in its schools", and discussed the Board's dismantling of a Biracial Committee "in direct violation of a federal court order". *Id.* at 456. Ultimately, I found that "this history reveals an insidious pattern which cannot be ignored, and must inform our decision today . . . [T]he Bossier Parish School Board's actions effectively eliminate the black community from the political process." *Id.*

I thus again conclude that the School Board's decision to adopt the Police Jury redistricting plan was motivated by a discriminatory, if not necessarily retrogressive, purpose. The evidence overwhelmingly indicates that the Bossier Parish School Board is one of those "most resistant jurisdictions" whose efforts Congress sought to combat when it enacted § 5 of the Voting Rights Act.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ.A. No. 94-1495 (LHS (USCA), GK, JR)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, ATTORNEY GENERAL, DEFENDANT,
GEORGE PRICE, ET AL., INTERVENOR-DEFENDANTS

[Filed: May 1, 1998]

ORDER

For the reasons set forth in the opinion issued today by this three-judge court, it is this 1st day of May, 1998,

ORDERED that plaintiff Bossier Parish School Board is given pre-clearance for its election plan adopted on October 1, 1992, and that it shall have a declaratory judgment to that effect.

/s/ JAMES ROBERTSON
JAMES ROBERTSON
United States District
Judge for the Court

APPENDIX B

In the Supreme Court of the United States

OCTOBER TERM, 1996

Nos. 95-1455, 95-1508

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD, ET AL.

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD, ET AL.

[Argued: Dec. 9, 1996
Decided May 12, 1997*]

Justice O'CONNOR delivered the opinion of the Court.

Today we clarify the relationship between § 2 and § 5 of the Voting Rights Act of 1965, 79 Stat. 437, 439, as amended, 42 U.S.C. §§ 1973, 1973c. Specifically, we decide two questions: (i) whether preclearance must

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* Together with No. 95-1508, *Price et al. v. Bossier Parish School Board et al.*, also on appeal from the same court.

be denied under § 5 whenever a covered jurisdiction's new voting "standard, practice, or procedure" violates § 2; and (ii) whether evidence that a new "standard, practice, or procedure" has a dilutive impact is always irrelevant to the inquiry whether the covered jurisdiction acted with "the purpose . . . of denying or abridging the right to vote on account of race or color" under § 5. We answer both in the negative.

I

Appellee Bossier Parish School Board (Board) is a jurisdiction subject to the preclearance requirements of § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, and must therefore obtain the approval of either the United States Attorney General or the United States District Court for the District of Columbia before implementing any changes to a voting "qualification, prerequisite, standard, practice, or procedure." The Board has 12 members who are elected from single-member districts by majority vote to serve 4-year terms. When the 1990 census revealed wide population disparities among its districts, see App. to Juris. Statement 93a (Stipulations of Fact and Law ¶ 82), the Board decided to redraw the districts to equalize the population distribution.

During this process, the Board considered two redistricting plans. It considered, and initially rejected, the redistricting plan that had been recently adopted by the Bossier Parish Police Jury, the parish's primary governing body (the Jury plan), to govern its own elections. Just months before, the Attorney General had precleared the Jury plan, which

also contained 12 districts. *Id.* at 88a (Stipulations, ¶ 68). None of the 12 districts in the Board's existing plan or in the Jury plan contained a majority of black residents. *Id.* at 93a (Stipulations, ¶ 82) (under 1990 population statistics in the Board's existing districts, the three districts with highest black concentrations contain 46.63%, 43.79%, and 30.13% black residents, respectively); *id.* at 85a (Stipulations, ¶ 59) (population statistics for Jury plan, with none of the plan's 12 districts containing a black majority). Because the Board's adoption of the Jury plan would have maintained the status quo regarding the number of black-majority districts, the parties stipulated that the Jury plan was not "retrogressive." *Id.* at 141a (Stipulations, ¶ 252) ("The . . . plan is not retrogressive to minority voting strength compared to the existing benchmark plan . . ."). Appellant George Price, president of the local chapter of the NAACP, presented the Board with a second option—a plan that created two districts each containing not only a majority of black residents, but a majority of voting-age black residents. *Id.* at 98a (Stipulations, ¶ 98). Over vocal opposition from local residents, black and white alike, the Board voted to adopt the Jury plan as its own, reasoning that the Jury plan would almost certainly be precleared again and that the NAACP plan would require the Board to split 46 electoral precincts.

But the Board's hopes for rapid preclearance were dashed when the Attorney General interposed a formal objection to the Board's plan on the basis of "new information" not available when the Justice Department had precleared the plan for the Police Jury—namely, the NAACP's plan, which demon-

strated that "black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts." *Id.* at 155a-156a (Attorney General's August 30, 1993, objection letter). The objection letter asserted that the Board's plan violated § 2 of the Act, 42 U.S.C. § 1973, because it "unnecessarily limit[ed] the opportunity for minority voters to elect their candidates of choice," *id.* at 156a, as compared to the new alternative. Relying on 28 C.F.R. § 51.55(b)(2) (1996), which provides that the Attorney General shall withhold preclearance where "necessary to prevent a clear violation of amended Section 2 [42 U.S.C. § 1973]," the Attorney General concluded that the Board's redistricting plan warranted a denial of preclearance under § 5. App. to Juris. Statement 157a. The Attorney General declined to reconsider the decision. *Ibid.*

The Board then filed this action seeking preclearance under § 5 in the District Court for the District of Columbia. Appellant Price and others intervened as defendants. The three-judge panel granted the Board's request for preclearance, over the dissent of one judge. 907 F. Supp. 434, 437 (D.D.C. 1995). The District Court squarely rejected the appellants' contention that a voting change's alleged failure to satisfy § 2 constituted an independent reason to deny preclearance under § 5: "We hold, as has every court that has considered the question, that a political subdivision that does not violate either the 'effect' or the 'purpose' prong of section 5 cannot be denied preclearance because of an alleged section 2 violation." *Id.* at 440-441. Given this holding, the District Court quite properly expressed no opinion on whether the Jury plan in fact violated § 2, and its

refusal to reach out and decide the issue in dicta does not require us, as Justice STEVENS insists, to "assume that the record discloses a 'clear violation' of § 2." See *post*, at 1507-1508 (opinion dissenting in part and concurring in part). That issue has yet to be decided by any court. The District Court did, however, reject appellants' related argument that a court "must still consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5." *Id.* at 445. We noted probable jurisdiction on June 3, 1996. 517 U.S. ___, 116 S. Ct. 1874, 135 L.Ed.2d 171.

II

The Voting Rights Act of 1965 (Act), 42 U.S.C. § 1973 *et seq.*, was enacted by Congress in 1964 to "attac[k] the blight of voting discrimination" across the Nation. S. Rep. No. 97-417, 2d Sess., p. 4 (1982) U.S. Code Cong. & Admin. News 1982 pp. 177, 180; *South Carolina v. Katzenbach*, 383 U.S. 301, 308, 86 S. Ct. 803, 808, 15 L.Ed.2d 769 (1966). Two of the weapons in the Federal Government's formidable arsenal are § 5 and § 2 of the Act. Although we have consistently understood these sections to combat different evils and, accordingly, to impose very different duties upon the States, see *Holder v. Hall*, 512 U.S. 874, 883, 114 S. Ct. 2581, 2587, 129 L.Ed.2d 687, (1994) (plurality opinion) (noting how the two sections "differ in structure, purpose, and application"), appellants nevertheless ask us to hold that a violation of § 2 is an independent reason to deny preclearance under § 5. Unlike Justice STEVENS, *post*, at 1509-1510, and n. 5 (opinion dissenting in part and concurring in part), we entertain little doubt that the Department of

Justice or other litigants would "routinely" attempt to avail themselves of this new reason for denying preclearance, so that recognizing § 2 violations as a basis for denying § 5 preclearance would inevitably make compliance with § 5 contingent upon compliance with § 2. Doing so would, for all intents and purposes, replace the standards for § 5 with those for § 2. Because this would contradict our longstanding interpretation of these two sections of the Act, we reject appellants' position.

Section 5, 42 U.S.C. § 1973c, was enacted as

> "a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. . . . Congress therefore decided, as the Supreme Court held it could, 'to shift the advantage of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.'" *Beer v. United States*, 425 U.S. 130, 140, 96 S. Ct. 1357, 1363, 47 L.Ed.2d 629 (1976) (quoting H.R. Rep. No. 94-196, pp. 57-58 (1970)).

In light of this limited purpose, § 5 applies only to certain States and their political subdivisions. Such a covered jurisdiction may not implement any change in a voting "qualification, prerequisite, standard, practice, or procedure" unless it first obtains either administrative preclearance of that change from the Attorney General or judicial preclearance from the District Court for the District of Columbia. 42 U.S.C. § 1973c. To obtain judicial preclearance, the

jurisdiction bears the burden of proving that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." *Ibid.*; *City of Rome v. United States*, 446 U.S. 156, 183, n. 18, 100 S. Ct. 1548, 1565, n. 18, 64 L.Ed.2d 119 (1980) (covered jurisdiction bears burden of proof). Because § 5 focuses on "freez[ing] election procedures," a plan has an impermissible "effect" under § 5 only if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, *supra*, at 141, 96 S. Ct. at 1364.

Retrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan. See *Holder*, *supra*, at 883, 114 S. Ct. at 2587 (plurality opinion) ("Under § 5, then, the proposed voting practice is measured against the existing voting practice to determine whether retrogression would result from the proposed change"). It also necessarily implies that the jurisdiction's existing plan is the benchmark against which the "effect" of voting changes is measured. In *Beer*, for example, we concluded that the city of New Orleans' reapportionment of its council districts, which created one district with a majority of voting-age blacks where before there had been none, had no discriminatory "effect." 425 U.S. at 141-142, 96 S. Ct. at 1364 ("It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5"). Likewise, in *City of Lockhart v. United States*, 460 U.S. 125, 103 S. Ct.

998, 74 L.Ed.2d 863 (1983), we found that the city's new charter had no retrogressive "effect" even though it maintained the city's prior practice of electing its council members at-large from numbered posts, and instituted a new practice of electing two of the city's four council members every year (instead of electing all the council members every two years). While each practice could "have a discriminatory effect under some circumstances," *id.* at 135, 103 S. Ct. at 1004, the fact remained that "[s]ince the new plan did not increase the degree of discrimination against [the city's Mexican-American population], it was entitled to § 5 preclearance [because it was not retrogressive]," *id.* at 134, 103 S. Ct. at 1004 (emphasis added).

Section 2, on the other hand, was designed as a means of eradicating voting practices that "minimize or cancel out the voting strength and political effectiveness of minority groups," S. Rep. No. 97-417, *supra*, at 28, U.S. Code Cong. & Admin. News 1982 pp. 177, 205. Under this broader mandate, § 2 bars *all* States and their political subdivisions from maintaining any voting "standard, practice, or procedure" that "results in a denial or abridgement of the right . . . to vote on account of race or color." 42 U.S.C. § 1973(a). A voting practice is impermissibly dilutive within the meaning of § 2

> "if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [members of a class defined by race or color] in that its members have less opportunity than other

> members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

A plaintiff claiming vote dilution under § 2 must initially establish that: (i) "[the racial group] is sufficiently large and geographically compact to constitute a majority in a single-member district"; (ii) the group is "politically cohesive"; and (iii) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S. Ct. 2752, 2766-2767, 92 L.Ed.2d 25 (1986); *Growe v. Emison*, 507 U.S. 25, 40, 113 S. Ct. 1075, 1084, 122 L.Ed.2d 388 (1993). The plaintiff must also demonstrate that the totality of the circumstances supports a finding that the voting scheme is dilutive. *Johnson v. DeGrandy*, 512 U.S. 997, 1011, 114 S. Ct. 2647, 2657, 129 L.Ed.2d 775 (1994); see *Gingles*, *supra*, at 44-45, 106 S. Ct. at 2762-2764 (listing factors to be considered by a court in assessing the totality of the circumstances). Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an "undiluted" practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable alternative voting practice to serve as the benchmark "undiluted" voting practice. *Holder v. Hall*, 512 U.S. at 881, 114 S. Ct. at 2586 (plurality opinion); *id.* at 950-951, 114 S. Ct. at 2621-2622 (Blackmun, J., dissenting).

Appellants contend that preclearance must be denied under § 5 whenever a covered jurisdiction's redistricting plan violates § 2. The upshot of this position is to shift the focus of § 5 from nonretro-

gression to vote dilution, and to change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan.

But § 5, we have held, is designed to combat only those effects that are retrogressive. See *supra*, at 1496-1497. To adopt appellants' position, we would have to call into question more than 20 years of precedent interpreting § 5. See, *e.g.*, *Beer*, *supra*; *City of Lockhart*, *supra*. This we decline to do. Section 5 already imposes upon a covered jurisdiction the difficult burden of proving the *absence* of discriminatory purpose and effect. See, *e.g.*, *Elkins v. United States*, 364 U.S. 206, 218, 80 S. Ct. 1437, 1445, 4 L.Ed.2d 1669 (1960) ("[A]s a practical matter it is never easy to prove a negative"). To require a jurisdiction to litigate whether its proposed redistricting plan also has a dilutive "result" before it can implement that plan—even if the Attorney General bears the burden of proving that "result"—is to increase further the serious federalism costs already implicated by § 5. See *Miller v. Johnson*, 515 U.S. 900, ——, 115 S. Ct. 2475, 2493, 132 L.Ed.2d 762 (1995) (noting the "federalism costs exacted by § 5 preclearance").

Appellants nevertheless contend that we should adopt their reading of § 5 because it is supported by our decision in *Beer*, by the Attorney General's regulations, and by considerations of public policy. In *Beer*, we held that § 5 prohibited only retrogressive effects and further observed that "an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141, 96 S. Ct. at 1364. Al-

though there had been no allegation that the redistricting plan in *Beer* "so . . . discriminate[d] on the basis of race or color as to be unconstitutional," we cited in *dicta* a few cases to illustrate when a redistricting plan might be found to be constitutionally offensive. *Id.* at 142, n. 14, 96 S. Ct. at 1364, n. 14. Among them was our decision in *White v. Regester*, 412 U.S. 755, 93 S. Ct. 2332, 37 L.Ed.2d 314 (1973), in which we sustained a vote dilution challenge, brought under the Equal Protection Clause, to the use of multimember election districts in two Texas counties. *Ibid.* Appellants argue that "[b]ecause vote dilution standards under the Constitution and Section 2 were generally coextensive at the time *Beer* was decided, *Beer*'s discussion meant that practices that violated Section 2 would not be entitled to preclearance under Section 5." Brief for Federal Appellant 36-37.

Even assuming, *arguendo*, that appellants' argument had some support in 1976, it is no longer valid today because the applicable statutory and constitutional standards have changed. Since 1980, a plaintiff bringing a constitutional vote dilution challenge, whether under the Fourteenth or Fifteenth Amendment, has been required to establish that the state or political subdivision acted with a discriminatory purpose. See *City of Mobile v. Bolden*, 446 U.S. 55, 62, 100 S. Ct. 1490, 1497, 64 L.Ed.2d 47 (1980) (plurality opinion) ("Our decisions . . . have made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose"); *id.* at 66, 100 S. Ct. at 1499 ("[O]nly if there is purposeful discrimination can there be a violation of the Equal

Protection Clause of the Fourteenth Amendment"); see also *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265, 97 S. Ct. 555, 563, 50 L.Ed.2d 450 (1977) ("Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause"). When Congress amended § 2 in 1982, it clearly expressed its desire that § 2 *not* have an intent component, see S. Rep. No. 97-417, at 2, U.S. Code Cong. & Admin. News 1982 pp. 177, 178 ("Th[e 1982] amendment is designed to make clear that proof of discriminatory intent is not required to establish a violation of Section 2"). Because now the Constitution requires a showing of intent that § 2 does not, a violation of § 2 is no longer *a fortiori* a violation of the Constitution. Congress itself has acknowledged this fact. See *id.* at 39 ("The Voting Rights Act is the best example of Congress' power to enact implementing legislation that goes beyond the direct prohibitions of the Constitution itself").

Justice STEVENS argues that the subsequent divergence of constitutional and statutory standards is of no moment because, in his view, we "did not [in *Beer*] purport to distinguish between challenges brought under the Constitution and those brought under the [Voting Rights] statute." *Post*, at 1510 (opinion dissenting in part and concurring in part). Our citation to *White*, he posits, incorporated *White*'s standard into our exception for nonretrogressive apportionments that violate § 5, whether or not that standard continued to coincide with the constitutional standard. In essence, Justice STEVENS reads *Beer* as creating an exception for nonretrogressive apportionments that so discriminate on the basis of race or

color as to violate any federal law that happens to coincide with what would have amounted to a constitutional violation in 1976. But this reading flatly contradicts the plain language of the exception we recognized, which applies solely to apportionments that "so discriminat[e] on the basis of race or color as to violate the Constitution." *Beer*, *supra*, at 141, 96 S. Ct. at 1364 (emphasis added). We cited *White*, not for itself, but because it embodied the current constitutional standard for a violation of the Equal Protection Clause. See also *id.* at 142, n. 14, 96 S. Ct. at 1364, n. 14 (noting that New Orleans' plan did "not remotely approach a violation of the *constitutional* standards enunciated in" *White* and other cited cases) (emphasis added). When *White* ceased to represent the current understanding of the Constitution, a violation of its standard—even though that standard was later incorporated in § 2—no longer constituted grounds for denial of preclearance under *Beer*.

Appellants' next claim is that we must defer to the Attorney General's regulations interpreting the Act, one of which states:

> "In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2, the Attorney General shall withhold Section 5 preclearance." 28 C.F.R. § 51.55(b)(2) (1996).

Although we normally accord the Attorney General's construction of the Voting Rights Act great defer-

ence, "we only do so if Congress has not expressed its intent with respect to the question, and then only if the administrative interpretation is reasonable." *Presley v. Etowah County Comm'n*, 502 U.S. 491, 508, 112 S. Ct. 820, 831, 117 L.Ed.2d 51 (1992). Given our longstanding interpretation of § 5, see *supra*, at 1496-1498, 1498-1500, which Congress has declined to alter by amending the language of § 5, *Arkansas Best Corp. v. Commissioner*, 485 U.S. 212, 222, n. 7, 108 S. Ct. 971, 977, n. 7, 99 L.Ed.2d 183 (1988) (placing some weight on Congress' failure to express disfavor with our 25-year interpretation of a tax statute), we believe Congress has made it sufficiently clear that a violation of § 2 is not grounds in and of itself for denying preclearance under § 5. That there may be some suggestion to the contrary in the Senate Report to the 1982 Voting Rights Act amendments, S. Rep. No. 97-417, *supra*, at 12, n. 31, U.S. Code Cong. & Admin. News 1982 pp. 177, 189, does not change our view. With those amendments, Congress, among other things, renewed § 5 but did so without changing its applicable standard. We doubt that Congress would depart from the settled interpretation of § 5 and impose a demonstrably greater burden on the jurisdictions covered by § 5, see *supra*, at 1498, by dropping a footnote in a Senate Report instead of amending the statute itself. See *Pierce v. Underwood*, 487 U.S. 552, 567, 108 S. Ct. 2541, 2551, 101 L.Ed.2d 490 (1988) ("Quite obviously, reenacting precisely the same language would be a strange way to make a change"). See also *City of Lockhart*, 460 U.S. 125, 103 S. Ct. 998, 74 L.Ed.2d 863 (1983) (reaching its holding over Justice Marshall's dissent, which raised the argument now advanced by appellants regarding this passage in the Senate Report).

Nor does the portion of the House Report cited by Justice STEVENS unambiguously call for the incorporation of § 2 into § 5. That portion of the Report states

> "many voting and election practices currently in effect are outside the scope of [§ 5] . . . because they were in existence before 1965. . . . Under the Voting Rights Act, whether a discriminatory practice or procedure is of recent origin affects only the mechanism that triggers relief, i.e., litigation [under § 2] or preclearance [under § 5]." H.R. Rep. No. 97-227, p. 28 (1981).

The obvious thrust of this passage is to establish that pre-1965 discriminatory practices are not free from scrutiny under the Voting Rights Act just because they need not be precleared under § 5: Such practices might still violate § 2. But to say that pre-1965 practices can be reached solely by § 2 is not to say that all post-1965 changes that might violate § 2 may be reached by both § 2 *and* § 5 or that "the substantive standards for § 2 and § 5 [are] the same," see *post*, at 1511 (opinion dissenting in part and concurring in part). Our ultimate conclusion is also not undercut by statements found in the "postenactment legislative record," see *post*, at 1511, n. 9, given that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States v. Price*, 361 U.S. 304, 313, 80 S. Ct. 326, 332, 4 L.Ed.2d 334 (1960). We therefore decline to give these sources controlling weight.

Appellants' final appeal is to notions of public policy. They assert that if the district court or Attorney General examined whether a covered jurisdiction's redistricting plan violates § 2 at the same time it ruled on preclearance under § 5, there would be no need for two separate actions and judicial resources would be conserved. Appellants are undoubtedly correct that adopting their interpretation of § 5 would serve judicial economy in those cases where a § 2 challenge follows a § 5 proceeding. But this does not always happen, and the burden on judicial resources might actually increase if appellants' position prevailed because § 2 litigation would effectively be incorporated into *every* § 5 proceeding.

Appellants lastly argue that preclearance is an equitable remedy, obtained through a declaratory judgment action in the district court, see 42 U.S.C. § 1973c, or through the exercise of the Attorney General's discretion, see 28 C.F.R. § 51.52(a) (1996). A finding that a redistricting plan violates § 2 of the Act, they contend, is an equitable "defense," on the basis of which a decisionmaker should, in the exercise of its equitable discretion, be free to deny preclearance. This argument, however, is an attempt to obtain through equity that which the law—*i.e.*, the settled interpretation of § 5—forbids. Because "it is well established that '[c]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law,'" *INS v. Pangilinan*, 486 U.S. 875, 883, 108 S. Ct. 2210, 2216, 100 L.Ed.2d 882 (1988) (citing *Hedges v. Dixon County*, 150 U.S. 182, 192, 14 S. Ct. 71, 74-75, 37 L.Ed. 1044 (1893)), this argument must fail.

Of course, the Attorney General or a private plaintiff remains free to initiate a § 2 proceeding if either believes that a jurisdiction's newly enacted voting "qualification, prerequisite, standard, practice, or procedure" may violate that section. All we hold today is that preclearance under § 5 may not be denied on that basis alone.

III

Appellants next contend that evidence showing that a jurisdiction's redistricting plan dilutes the voting power of minorities, see *supra*, at 1498, is at least *relevant* in a § 5 proceeding because it tends to prove that the jurisdiction enacted its plan with a discriminatory "purpose." The district court, reasoning that "[t]he line [between § 2 and § 5] cannot be blurred by allowing a defendant to do indirectly what it cannot do directly," 907 F. Supp. at 445, rejected this argument and held that it "will not permit section 2 evidence to prove discriminatory purpose under section 5." *Ibid.* Because we hold that some of this "§ 2 evidence" may be relevant to establish a jurisdiction's "intent to retrogress" and cannot say with confidence that the district court considered the evidence proffered to show that the Board's reapportionment plan was dilutive, we vacate this aspect of the district court's holding and remand. In light of this conclusion, we leave open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent. See *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 465, n. 5, 109 S. Ct. 1904, 1911, n. 5, 104 L.Ed.2d 506 (1989) (declining to decide an issue that "is not necessary to our decision"). Reserving this question is

particularly appropriate when, as in this case, it was not squarely addressed by the decision below or in the parties' briefs on appeal. See Brief for Federal Appellant 23; Brief for Appellant Price et. al. 31-33, 34-35; Brief for Appellee 42-43. But in doing so, we do not, contrary to Justice STEVENS' view, see *post*, at 1508 (opinion dissenting in part and concurring in part), necessarily assume that the Board enacted the Jury plan with some non-retrogressive, but nevertheless discriminatory, "purpose." The existence of such a purpose, and its relevance to § 5, are issues to be decided on remand.

Although § 5 warrants a denial of preclearance if a covered jurisdiction's voting change "ha[s] the purpose [or] . . . the effect of denying or abridging the right to vote on account of race or color," 42 U.S.C. § 1973c, we have consistently interpreted this language in light of the purpose underlying § 5—"to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities." *Beer*, 425 U.S. at 141, 96 S. Ct. at 1364. Accordingly, we have adhered to the view that the only "effect" that violates § 5 is a retrogressive one. *Beer*, 425 U.S. at 141, 96 S. Ct. at 1363-1364; *City of Lockhart*, 460 U.S. at 134, 103 S. Ct. at 1004.

Evidence is "relevant" if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. Rule Evid. 401. As we observed in *Arlington Heights*, 429 U.S. at 266, 97 S. Ct. at 563-564, the impact of an official action is often probative of why the

action was taken in the first place since people usually intend the natural consequences of their actions. Thus, a jurisdiction that enacts a plan having a dilutive impact is more likely to have acted with a discriminatory intent to dilute minority voting strength than a jurisdiction whose plan has no such impact. A jurisdiction that acts with an intent to dilute minority voting strength is more likely to act with an intent to worsen the position of minority voters—*i.e.*, an intent to retrogress—than a jurisdiction acting with no intent to dilute. The fact that a plan has a dilutive impact therefore makes it "more probable" that the jurisdiction adopting that plan acted with an intent to retrogress than "it would be without the evidence." To be sure, the link between dilutive impact and intent to retrogress is far from direct, but "the basic standard of relevance . . . is a liberal one," *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 587, 113 S. Ct. 2786, 2794, 125 L.Ed.2d 469 (1993), and one we think is met here.

That evidence of a plan's dilutive impact may be relevant to the § 5 purpose inquiry does not, of course, mean that such evidence is dispositive of that inquiry. In fact, we have previously observed that a jurisdiction's single decision to choose a redistricting plan that has a dilutive impact does not, without more, suffice to establish that the jurisdiction acted with a discriminatory purpose. *Shaw v. Hunt*, 517 U.S. ——, ——, n. 6, 116 S. Ct. 1894, 1904, n. 6, 135 L.Ed.2d 207 (1996) ("[W]e doubt that a showing of discriminatory effect under § 2, alone, could support a claim of discriminatory purpose under § 5"). This is true whether the jurisdiction chose the more dilutive plan because it better comported with its traditional

districting principles, see *Miller v. Johnson*, 515 U.S. at ——, 115 S. Ct. at 2491-2492 (rejecting argument that a jurisdiction's failure to adopt the plan with the greatest possible number of majority black districts establishes that it acted with a discriminatory purpose); *Shaw*, *supra*, at —— - ——, 116 S. Ct. at 1903-1904 (same), or if it chose the plan for no reason at all. Indeed, if a plan's dilutive impact were dispositive, we would effectively incorporate § 2 into § 5, which is a result we find unsatisfactory no matter how it is packaged. See Part II, *supra*.

As our discussion illustrates, assessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a "sensitive inquiry into such circumstantial and direct evidence as may be available." *Arlington Heights*, 429 U.S. at 266, 97 S. Ct. at 564. In conducting this inquiry, courts should look to our decision in *Arlington Heights* for guidance. There, we set forth a framework for analyzing "whether invidious discriminatory purpose was a motivating factor" in a government body's decisionmaking. *Ibid.* In addition to serving as the framework for examining discriminatory purpose in cases brought under the Equal Protection Clause for over two decades, see, *e.g.*, *Shaw v. Reno*, 509 U.S. 630, 644, 113 S. Ct. 2816, 2825, 125 L.Ed.2d 511 (1993) (citing *Arlington Heights* standard in context of Equal Protection Clause challenge to racial gerrymander of districts); *Rogers v. Lodge*, 458 U.S. 613, 618, 102 S. Ct. 3272, 3276, 73 L.Ed.2d 1012 (1982) (evaluating vote dilution claim under Equal Protection Clause using *Arlington Heights* test); *Mobile*, 446 U.S. at 70-74, 100 S. Ct. at 1501-1503 (same), the *Arlington Heights* framework has also been used, at least in part, to evaluate purpose in our previous § 5 cases. See *Pleasant Grove*, 479 U.S. at 469-470, 107 S. Ct. at 798-799 (considering city's history in rejecting annexation of black neighborhoods and its departure from normal procedures when calculating costs of annexation alternatives); see also *Busbee v. Smith*, 549 F. Supp. 494, 516-517 (D.D.C. 1982), *summarily aff'd*, 459 U.S. 1166, 103 S. Ct. 809, 74 L.Ed.2d 1010 (1983) (referring to *Arlington Heights* test); *Port Arthur v. United States*, 517 F. Supp. 987, 1019, *aff'd*, 459 U.S. 159, 103 S. Ct. 530, 74 L.Ed.2d 334 (1982) (same).

The "important starting point" for assessing discriminatory intent under *Arlington Heights* is "the impact of the official action whether it 'bears more heavily on one race than another.'" 429 U.S. at 266, 97 S. Ct. at 564 (citing *Washington v. Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 2048-2049, 48 L.Ed.2d 597 (1976)). In a § 5 case, "impact" might include a plan's retrogressive effect and, for the reasons discussed above, its dilutive impact. Other considerations relevant to the purpose inquiry include, among other things, "the historical background of the [jurisdiction's] decision"; "[t]he specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence"; and "[t]he legislative or administrative history, especially . . . [any] contemporary statements by members of the decisionmaking body." *Id.* at 268, 97 S. Ct. at 565.

We are unable to determine from the District Court's opinion in this case whether it deemed irrelevant all evidence of the dilutive impact of the redistricting plan adopted by the Board. At one point,

the District Court correctly stated that "the adoption of one nonretrogressive plan rather than another nonretrogressive plan that contains more majority-black districts cannot *by itself* give rise to the inference of discriminatory intent." 907 F. Supp., at 450 (emphasis added). This passage implies that the District Court believed that the existence of less dilutive options was at least relevant to, though not dispositive of, its purpose inquiry. While this language is consistent with our holding today, see *supra*, at 1501-1502, the District Court also declared that "we will not permit section 2 evidence to prove discriminatory purpose under section 5." *Ibid.* With this statement, the District Court appears to endorse the notion that evidence of dilutive impact is irrelevant even to an inquiry into retrogressive intent, a notion we reject. See *supra*, at 1501-1502.

The Board contends that the District Court actually "presumed that white majority districts had [a dilutive] effect," Brief for Appellee 35, and "cut directly to the dispositive question 'started' by the existence of [a dilutive] impact: did the Board have 'legitimate, nondiscriminatory motives' for adopting its plan[?]" *Id.* at 33. Even if the Board were correct, the District Court gave no indication that it was assuming the plan's dilutive effect, and we hesitate to attribute to the District Court a rationale it might not have employed. Because we are not satisfied that the District Court considered evidence of the dilutive impact of the Board's redistricting plan, we vacate this aspect of the District Court's opinion. The District Court will have the opportunity to apply the *Arlington Heights* test on remand as well as to address appellants' additional arguments that it erred

in refusing to consider evidence that the Board was in violation of an ongoing injunction "to 'remedy any remaining vestiges of [a] dual [school] system'," 907 F. Supp., at 449, n. 18.

* * * * *

The judgment of the District Court is vacated and the case is remanded for further proceedings consistent with this decision.

It is so ordered.

Justice THOMAS, concurring.

Although I continue to adhere to the views I expressed in *Holder v. Hall*, 512 U.S. 874, 891, 114 S. Ct. 2581, 2591, 129 L.Ed.2d 687 (1994) (opinion concurring in judgment), I join today's opinion because it is consistent with our vote dilution precedents. I fully anticipate, however, that as a result of today's holding, all of the problems we have experienced in § 2 vote dilution cases will now be replicated and, indeed, exacerbated in the § 5 retrogression inquiry.

I have trouble, for example, imagining a reapportionment change that could not be deemed "retrogressive" under our vote dilution jurisprudence by a court inclined to find it so. We have held that a reapportionment plan that "enhances the position of racial minorities" by increasing the number of majority-minority districts does not "have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5." *Beer v. United States*, 425 U.S. 130, 141, 96 S. Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). But in so holding we studiously avoided addressing one of the necessary consequences of increasing majority-minority districts: Such action *necessarily decreases* the level of minority influence in surrounding districts, and to that extent "dilutes" the vote of minority voters in those other districts, and perhaps dilutes the influence of the minority group as a whole. See, *e.g.*, *Hays v. Louisiana*, 936 F. Supp. 360, 364, n. 17 (W.D. La. 1996) (three-judge court) (noting that plaintiffs' expert "argues convincingly that our plan, with its one black majority and three influence districts, empowers more black voters statewide than does" a plan with

two black-majority districts and five "bleached" districts in which minority influence was reduced in order to create the second black-majority district); cf. *Johnson v. De Grandy*, 512 U.S. 997, 1007, 114 S. Ct. 2647, 2655, 129 L.Ed.2d 775 (1994) (noting that dilution can occur by "fragmenting the minority voters among several districts . . . or by packing them into one or a small number of districts to minimize their influence in the districts next door").

Under our vote dilution jurisprudence, therefore, a court could strike down *any* reapportionment plan, either because it did not include enough majority-minority districts or because it did (and thereby diluted the minority vote in the remaining districts). A court could presumably even strike down a new reapportionment plan that did not significantly alter the status quo at all, on the theory that such a plan did not measure up to some hypothetical ideal. With such an indeterminate "rule," § 5 ceases to be primarily a prophylactic tool in the important war against discrimination in voting, and instead becomes the means whereby the Federal Government, and particularly the Department of Justice, usurps the legitimate political judgments of the States. And such an empty "rule" inevitably forces the courts to make political judgments regarding which type of apportionment best serves supposed minority interests—judgments that the courts are ill-equipped to make.

I can at least find some solace in the belief that today's opinion will force us to confront, with a renewed sense of urgency, this fundamental incon-

sistency that lies at the heart of our vote dilution jurisprudence.

Beyond my general objection to our vote dilution precedent, the one portion of the majority opinion with which I disagree is the majority's new suggestion that preclearance standards established by the Department of Justice are "normally" entitled to deference. See *ante*, at 1499.* Section 5 sets up alternative routes for preclearance, and the primary route specified is through the District Court for the District of Columbia, not through the Attorney General's office. See 42 U.S.C. § 1973c (generally requiring District Court preclearance, with a proviso that covered jurisdictions may *obtain* preclearance by the Attorney General in lieu of the District Court preclearance, but providing no authority for the Attorney General to *preclude* judicial preclearance). Requiring the District Court to defer to adverse preclearance decisions by the Attorney General based upon the very preclearance standards she articulates would essentially render the independence of the District Court preclearance route a nullity.

Moreover, given our own "longstanding interpretation of § 5," see *ante*, at 1499, deference to the particular preclearance regulation addressed in this case would be inconsistent with another of the

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* I do not address the separate question, not presented by this case, whether the Department's *interpretation* of the Voting Rights Act, as opposed to its articulation of standards applicable to its own preclearance determinations, is entitled to deference. The regulation at issue here only purports to be the latter.

Attorney General's regulations, which provides: "In making determinations [under § 5] the Attorney General will be guided by the relevant decisions of the Supreme Court of the United States and of other Federal courts." 28 C.F.R. § 51.56 (1996). Thus, while I agree with the majority's decision not to defer to the Attorney General's standards, I would reach that result on different grounds.

Justice BREYER, with whom Justice GINSBURG joins, concurring in part and concurring in the judgment.

I join Parts I and II of the majority opinion, and Part III insofar as it is not inconsistent with this opinion. I write separately to express my disagreement with one aspect of the majority opinion. The majority says that we need not decide "whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." *Ante*, at 1501. In my view, we should decide the question, for otherwise the District Court will find it difficult to evaluate the evidence that we say it must consider. Cf. *post*, at 1512 (STEVENS, J., dissenting in part and concurring in part). Moreover, the answer to the question is that the "purpose" inquiry does extend beyond the search for retrogressive intent. It includes the purpose of unconstitutionally diluting minority voting strength.

The language of § 5 itself forbids a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" where that change either (1) has the "purpose" or (2) will have the "effect" of "denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. These last few words reiterate in context the language of the 15th Amendment itself: "The right of citizens . . . to vote shall not be denied or abridged . . . on account of race [or] color. . . ." This use of constitutional language indicates that one purpose forbidden by the statute is a purpose to act unconstitutionally. And a new plan enacted with the purpose of unconstitutionally diluting minority votes is an unconstitutional plan. *Mobile v. Bolden*, 446 U.S. 55, 62-63, 66, 100 S. Ct. 1490, 1497-1498, 1499, 64 L.Ed.2d 47 (1980) (plurality opinion); *ante*, at 1499.

Of course, the constitutional language also applies to § 5's prohibition that rests upon "effects." The Court assumes, in its discussion of "effects," that the § 5 word "effects" does not now embody a *purely* constitutional test, whether or not it ever did so. See *ante*, at 1497-1498; *City of Rome v. United States*, 446 U.S. 156, 173, 177, 100 S. Ct. 1548, 1559-1560, 64 L.Ed.2d 119 (1980). And that fact, here, is beside the point. The separate argument about the meaning of the word "effect" concerns *how far beyond* the Constitution's requirements Congress intended that word to reach. The argument about "purpose" is simply whether Congress intended the word to reach *as far as* the Constitution itself, embodying those purposes that, in relevant context, the Constitution itself would forbid. I can find nothing in the Court's discussion that shows that Congress intended to restrict the meaning of the statutory word "purpose" short of what the Constitution itself requires. And the Court has previously expressly indicated that minority vote dilution is a harm that § 5 guards against. *Allen v. State Bd. of Elections*, 393 U.S. 544, 569, 89 S. Ct. 817, 833-834, 22 L.Ed.2d 1 (1969).

Consider a hypothetical example that will clarify the precise legal question here at issue. Suppose that a covered jurisdiction is choosing between two new voting plans, A and B. Neither plan is retrogressive. Plan A violates every traditional districting principle, but from the perspective of minority representation, it maintains the status quo, thereby meeting the "effects" test of § 5. See *ante*, at 1497-1498.

Plan B is basically consistent with traditional districting principles and it also creates one or two new majority-minority districts (in a state where the number of such districts is significantly less than proportional to minority voting age population). Suppose further that the covered jurisdiction adopts Plan A. Without any other proposed evidence or justification, ordinary principles of logic and human experience suggest that the jurisdiction would likely have adopted Plan A with "the purpose . . . of denying or abridging the right to vote on account of race or color." § 1973c. It is reasonable to assume that the Constitution would forbid the use of such a plan. See *Rogers v. Lodge*, 458 U.S. 613, 617, 102 S. Ct. 3272, 3275, 73 L.Ed.2d 1012 (1982) (Fourteenth Amendment covers vote dilution claims); *Mobile*, *supra*, at 66, 100 S. Ct. at 1499 (plurality opinion) (same). And compare *id.* at 62-63, 100 S. Ct. at 1497-1498 (intentional vote dilution may be illegal under the Fifteenth Amendment), and *Gomillion v. Lightfoot*, 364 U.S. 339, 346, 81 S. Ct. 125, 129-130, 5 L.Ed.2d 110 (1960) (Fifteenth Amendment covers municipal boundaries drawn to exclude blacks), with *Mobile*, *supra*, at 84, n. 3, 100 S. Ct. at 1509, n. 3 (STEVENS, J., concurring in judgment) (*Mobile* plurality said that Fifteenth Amendment does not reach vote dilution); *Voinovich v. Quilter*, 507 U.S. 146, 159, 113 S. Ct. 1149, 1158, 122 L.Ed.2d 500 (1993) ("This Court has not decided whether the Fifteenth Amendment applies to vote-dilution claims . . ."); *Shaw v. Reno*, 509 U.S. 630, 645, 113 S. Ct. 2816, 2825-2826, 125 L.Ed.2d 511 (1993) (endorsing the *Gomillion* concurrence's Fourteenth Amendment approach); *Beer v. United States*, 425 U.S. 130, 142, n. 14, 96 S. Ct. 1357, 1364, n. 14, 47 L.Ed.2d 629 (1976). Then, to read § 5's "purpose"

language to require approval of Plan A, even though the jurisdiction cannot provide a neutral explanation for its choice, would be both to read § 5 contrary to its plain language and also to believe that Congress would have wanted a § 5 court (or the Attorney General) to approve an unconstitutional plan adopted with an unconstitutional purpose.

In light of this example, it is not surprising that this Court has previously indicated that the purpose part of § 5 prohibits a plan adopted with the purpose of unconstitutionally diluting minority voting strength, whether or not the plan is retrogressive in its effect. In *Shaw v. Hunt*, for example, the Court doubted "that a showing of discriminatory effect under § 2, *alone*, could support a claim of discriminatory purpose under § 5." 517 U.S. ——, n. 6, 116 S. Ct. at 1904, n. 6 (1996) (emphasis added). The word "alone" suggests that the evidence of a discriminatory effect there at issue—evidence of dilution—could be relevant to a discriminatory purpose claim. And if so, the more natural understanding of § 5 is that an unlawful purpose includes more than simply a purpose to retrogress. Otherwise, dilution would either dispositively show an unlawful discriminatory effect (if retrogressive) or it would almost always be irrelevant (if not retrogressive). Either way, it would not normally have much to do with unlawful purpose. See also the discussions in *Richmond v. United States*, 422 U.S. 358, 378-379, 95 S. Ct. 2296, 2307-2308, 45 L.Ed.2d 245 (1975) (annexation plan did not have an impermissible dilutive effect but the Court remanded for a determination of whether there was an impermissible § 5 purpose); *Pleasant Grove v. United States*, 479 U.S. 462, 471-472, and n. 11, 107 S. Ct. 794,

800, and n. 11, 93 L.Ed.2d 866 (1987) (purpose to minimize *future* black voting strength is impermissible under § 5); *Port Arthur v. United States*, 459 U.S. 159, 168, 103 S. Ct. 530, 536, 74 L.Ed.2d 334 (1982) (a plan adopted for a discriminatory purpose is invalid under § 5 even if it "might otherwise be said to reflect the political strength of the minority community"); *post*, at 1512 (STEVENS, J., dissenting in part and concurring in part).

Miller v. Johnson, 515 U.S. 900, 115 S. Ct. 2475, 132 L.Ed.2d 762 (1995), also implicitly assumed that § 5's "purpose" stretched beyond the purely retrogressive. There, the Justice Department pointed out that Georgia made a choice between two redistricting plans, one of which (call it Plan A) had more majority-black districts than the other (call it Plan B). The Department argued that the fact that Georgia chose Plan B showed a forbidden § 5 discriminatory purpose. The Court rejected this argument, but the reason that the majority gave for that rejection is important. The Court pointed out that Plan B embodied traditional state districting principles. It reasoned that "[t]he State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference" of an unlawful discriminatory purpose. *Id.* at ——, 115 S. Ct. at 2492. If the only relevant "purpose" were a retrogressive purpose, this reasoning, with its reliance upon traditional districting principles, would have been beside the point. The Court would have concerned itself only with Georgia's intent to worsen the position of minorities, not with the reasons why Georgia could have adopted one of two potentially ameliorative plans. Indeed, the

Court indicated that an ameliorative plan *would* run afoul of the § 5 purpose test if it violated the Constitution. *Ibid.* See also *Shaw v. Hunt*, *supra*, at ——- - ——, 116 S. Ct. at 1903-1904.

In sum, the Court today should make explicit an assumption implicit in its prior cases. Section 5 prohibits a covered state from making changes in its voting practices and procedures where those changes have the *unconstitutional* "purpose" of unconstitutionally diluting minority voting strength.

Justice STEVENS, with whom Justice SOUTER joins, dissenting in part and concurring in part.

In my view, a plan that clearly violates § 2 is not entitled to preclearance under § 5 of the Voting Rights Act of 1965. The majority's contrary view would allow the Attorney General of the United States to place her stamp of approval on a state action that is in clear violation of federal law. It would be astonishing if Congress had commanded her to do so. In fact, however, Congress issued no such command. Surely no such command can be found in the text of § 5 of the Voting Rights Act.[1] Moreover, a fair

[1] As originally enacted, § 5 provided:

"Sec. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the

review of the text and the legislative history of the 1982 amendment to § 2 of that Act indicates that Congress intended the Attorney General to deny preclearance under § 5 whenever it was clear that a new voting practice was prohibited by § 2. This does not mean that she must make an independent inquiry into possible violations of § 2 whenever a request for preclearance is made. It simply means that, as her regulations provide, she must refuse preclearance when "necessary to prevent a clear violation of amended section 2." 28 C.F.R. § 51.55(b)(2) (1996).

It is, of course, well settled that the Attorney General must refuse to preclear a new election procedure in a covered jurisdiction if it will "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141, 96 S. Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). A retrogressive effect or a retrogressive purpose is a sufficient basis for denying a preclearance request under § 5. Today, however, the Court holds that retrogression is the only kind of effect that will justify denial of preclearance under § 5, *ante*, at 1496-1501, and it assumes that "the § 5 purpose inquiry [never] extends beyond the search for

Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code [28 USCS § 2284] and any appeal shall lie to the Supreme Court." 79 Stat. 439.

retrogressive intent." *Ante*, at ——. While I agree that this action must be remanded even under the Court's miserly interpretation of § 5, I disagree with the Court's holding/assumption that § 5 is concerned only with retrogressive effects and purposes.

Before explaining my disagreement with the Court, I think it important to emphasize the three factual predicates that underlie our analysis of the issues. First, we assume that the plan submitted by the Board was not "retrogressive" because it did not make matters any worse than they had been in the past. None of the 12 districts had ever had a black majority and a black person had never been elected to the Bossier Parish School Board (Board). App. to Juris. Statement 67a. Second, because the majority in both the District Court and this Court found that even clear violations of § 2 must be precleared and thus found it unnecessary to discuss whether § 2 was violated in this action, we may assume that the record discloses a "clear violation" of § 2. This means that, in the language of § 2, it is perfectly clear that "the political processes leading to nomination or election [to positions on the Board] are not equally open to participation by members of [the African-American race] in that its members have less opportunity than other members of the electorate to . . . elect representatives of their choice." 42 U.S.C. § 1973(b).[2]

[2] Although the majority in the District Court refused to consider any of the evidence relevant to a § 2 violation, the parties' stipulations suggest that the plan violated § 2. For instance, the parties' stipulated that there had been a long history of discrimination against black voters in Bossier Parish, see App. to Juris. Statement 130a-140a; that voting in Bossier Parish was racially polarized, see *id.*, at 122a-127a; and that it

Third, if the Court is correct in assuming that the purpose inquiry under § 5 may be limited to evidence of "retrogressive intent," it must also be willing to assume that the documents submitted in support of the request for preclearance clearly establish that the plan was adopted for the specific purpose of preventing African-Americans from obtaining representation on the Board. Indeed, for the purpose of analyzing the legal issues, we must assume that Judge Kessler, concurring in part and dissenting in part, accurately summarized the evidence when she wrote:

> "The evidence in this case demonstrates overwhelmingly that the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose. The adoption of the Police Jury plan bears heavily on the black community because it denies its members a reasonable opportunity to elect a candidate of their choice. The history of discrimination by the Bossier School System and the Parish itself demonstrates the Board's continued refusal to address the concerns of the black community in Bossier Parish. The sequence of events leading up to the adoption of the plan illustrate the Board's discriminatory purpose. The School Board's substantive departures from traditional districting principles is similarly probative of discriminatory motive. Three School Board members have acknowledged that the Board

was possible to draw two majority black districts without violating traditional districting principles, see *id.* at 76a, 82a-83a, 114a-115a.

is hostile to black representation. Moreover, some of the purported rationales for the School Board's decision are flat-out untrue, and others are so glaringly inconsistent with the facts of the case that they are obviously pretexts." 907 F. Supp. 434, 463 (D.D.C. 1995).

If the purpose and the effect of the Board's plan were simply to maintain the discriminatory status quo as described by Judge Kessler, the plan would not have been retrogressive. But, as I discuss below, that is not a sufficient reason for concluding that it complied with § 5.

I

In the Voting Rights Act of 1965, Congress enacted a complex scheme of remedies for racial discrimination in voting. As originally enacted, § 2 of the Act was "an uncontroversial provision" that "simply restated" the prohibitions against such discrimination "already contained in the Fifteenth Amendment," *Mobile v. Bolden*, 446 U.S. 55, 61, 100 S. Ct. at 1496-1497 (1980) (plurality opinion). Like the constitutional prohibitions against discriminatory districting practices that were invalidated in cases like *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S. Ct. 125, 5 L.Ed.2d 110 (1960), and *White v. Regester*, 412 U.S. 755, 93 S. Ct. 2332, 37 L.Ed.2d 314 (1973), § 2 was made applicable to every State and political subdivision in the country. Section 5, on the other hand, was highly controversial because it imposed novel, extraordinary remedies in certain areas where discrimination had been most flagrant. See *South Carolina v. Katzen-*

bach, 383 U.S. 301, 334-335, 86 S. Ct. 803, 821-822, 15 L.Ed.2d 769 (1966).[3] Jurisdictions like Bossier Parish in Louisiana are covered by § 5 because their history of discrimination against African-Americans was a matter of special concern to Congress. Because these jurisdictions had resorted to various strategies to avoid complying with court orders to remedy discrimination, "Congress had reason to suppose that [they] might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself." *Id.* at 335, 86 S. Ct. at 822. Thus Congress enacted § 5, not to maintain the discriminatory status quo, but to stay ahead of efforts by the most resistant jurisdictions to undermine the Act's purpose of "rid[ding] the country of racial discrimination." *Id.* at 315, 86 S. Ct. at 812 ("The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant").

In areas of the country lacking a history of pervasive discrimination, Congress presumed that voting practices were generally lawful. Accordingly, the burden of proving a violation of § 2 has always rested on the party challenging the voting practice. The situation is dramatically different in covered jurisdictions. In those jurisdictions, § 5 flatly prohibits the adoption of any new voting procedure unless the State or political subdivision institutes an action in the Federal District Court for the District of Columbia

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[3] Section 4 of the Act sets forth the formula for identifying the jurisdictions in which such discrimination had occurred, see *South Carolina v. Katzenbach*, 383 U.S. at 317-318, 86 S. Ct. at 812-813.

and obtains a declaratory judgment that the change will not have a discriminatory purpose or effect. See 42 U.S.C. § 1973c. The burden of proving compliance with the Act rests on the jurisdiction. A proviso to § 5 gives the Attorney General the authority to allow the new procedure to go into effect, but like the immigration statutes that give her broad discretion to waive deportation of undesirable aliens, it does not expressly impose any limit on her discretion to refuse preclearance. See *ibid.* The Attorney General's discretion is, however, cabined by regulations that are presumptively valid if they "are reasonable and do not conflict with the Voting Rights Act itself," *Georgia v. United States*, 411 U.S. 526, 536, 93 S. Ct. 1702, 1708, 36 L.Ed.2d 472 (1973). Those regulations provide that preclearance will generally be granted if a proposed change "is free of discriminatory purpose and retrogressive effect"; they also provide, however, that in "those instances" in which the Attorney General concludes "that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2," preclearance shall be withheld.[4]

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[4] Title 28 C.F.R. § 51.55 (1996) provides:

"Consistency with constitutional and statutory requirements.

"(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

"(b) *Section 2.* (1) Preclearance under section 5 of a voting change will not preclude any legal action under section 2 by the Attorney General if implementation of the change subsequently demonstrates that such action is appropriate.

"(2) In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold section 5 preclearance."

There is no basis for the Court's speculation that litigants would so "'routinely,'" *ante*, at 1497, employ this 10-year old regulation as to "make compliance with § 5 contingent upon compliance with § 2." *Ante*, at 1497. Nor do the regulations require the jurisdiction to assume the burden of proving the absence of vote dilution, see *ante*, at ——— - ———. They merely preclude preclearance when "necessary to prevent a clear violation of . . . section 2." While the burden of disproving discriminatory purpose or retrogressive effect is on the submitting jurisdiction, if the Attorney General's conclusion that the change would clearly violate § 2 is challenged, the burden on that issue, as in any § 2 challenge, should rest on the Attorney General.[5]

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[5] Thus, I agree with those courts that have found that the jurisdiction is not required to prove that its proposed change will not violate § 2 in order to receive preclearance. See *Arizona v. Reno*, 887 F. Supp. 318, 321 (D.D.C. 1995). Although several three-judge district courts have concluded that § 2 standards should not be incorporated into § 5, none has held that preclearance should be granted when there is a clear

The Court does not suggest that this regulation is inconsistent with the text of § 5. Nor would this be persuasive, since the language of § 5 forbids preclearance of any voting practice that would have "the purpose [or] effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. Instead the Court rests its entire analysis on the flawed premise that our cases hold that a change, even if otherwise unlawful, cannot have an effect prohibited by § 5 unless that effect is retrogressive. The two cases on which the Court relies, *Beer v. United States*, 425 U.S. 130, 96 S. Ct. 1357, 47 L.Ed.2d 629 (1976), and *City of Lockhart v. United States*, 460 U.S. 125, 103 S. Ct. 998, 74 L.Ed.2d 863 (1983), do hold (as the current regulations provide) that proof that a change is not retrogressive is normally sufficient to justify preclearance under § 5. In neither case, however, was the Court confronted with the question whether that showing would be sufficient if the proposed change was so discriminatory that it clearly violated some other federal law. In fact, in *Beer*—which held that a legislative reapportionment enhancing the position of African-American voters did not have a discriminatory effect—the Court stated that "an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself

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violation of § 2; rather, they appear simply to have determined that a § 2 inquiry is not routinely required in a § 5 case. See, *e.g.*, *Georgia v. Reno*, 881 F. Supp. 7, 12-14 (D.D.C. 1995); *New York v. United States*, 874 F. Supp. 394, 398-399 (D.D.C. 1994); cf. *Burton v. Sheheen*, 793 F. Supp. 1329, 1350 (D.S.C. 1992) (holding that although courts are not "obligated to completely graft" § 2 standards onto § 5, "[i]t would be incongruous for the court to adopt a plan which did not comport with the standards and guidelines of § 2").

so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141, 96 S. Ct. at 1364.[6] Thus, to the extent that the *Beer* Court addressed the question at all, it suggested that certain nonretrogressive changes that were nevertheless discriminatory should not be precleared.

The Court discounts the significance of the "unless" clause because it refers to a constitutional violation rather than a statutory violation. According to the Court's reading, the *Beer* dictum at most precludes preclearance of changes that violate the Constitution rather than changes that violate § 2. This argument is unpersuasive. As the majority notes, the *Beer* Court cites *White v. Regester*, 412 U.S. at 766, 93 S. Ct. at 2339-2340, which found unconstitutional a reapportionment scheme that gave African-American residents "less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." Because, in 1976, when *Beer* was decided, the § 2 standard was coextensive with the constitutional standard, *Beer* did not purport to distinguish between challenges brought under the Constitution and those brought under the statute. Rather *Beer*'s dictum suggests that any changes that violate the standard

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[6] In *Lockhart* the Court disavowed reliance on the ameliorative character of the change reviewed in *Beer*, see 460 U.S. at 134, n. 10, 103 S. Ct. at 1004, n. 10. It left open the question whether Congress had altered the *Beer* standard when it amended § 2 in 1982, *id.* at 133, n. 9, 103 S. Ct. at 1003, n. 9, and said nothing about the possible significance of a violation of a constitutional or statutory prohibition against vote dilution.

established in *White v. Regester* should not be precleared.[7]

As the Court recognizes, *ante*, at 1499, the law has changed in two respects since the announcement of the *Beer* dictum. In 1980, in what was perceived by Congress to be a change in the standard applied in *White v. Regester*, a plurality of this Court concluded that discriminatory purpose is an essential element of a constitutional vote dilution challenge. See *Mobile v. Bolden*, 446 U.S. 55, 62, 100 S. Ct. 1490, 1497 (1980). In reaction to that decision, in 1982 Congress amended § 2 by placing in the statute the language used in the *White* opinion to describe what is commonly known as the "results" standard for evaluating vote dilution challenges. See 96 Stat. 134 (now codified at 42 U.S.C. §§ 1973(a)-(b)); *Thornburg v. Gingles*, 478 U.S. 30, 35, 106 S. Ct. 2752, 2758, 92 L.Ed.2d 25 (1986).[8] Thus Congress preserved, as a matter of statutory law, the very same standard that the Court had identified in *Beer* as an exception to the general rule requiring preclearance of nonretrogressive changes. Because in 1975, *Beer* required denial of preclearance for voting plans that violated the *White* standard, it follows that Congress in

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[7] In response to this dissent, the majority contends that, at most, *Beer v. United States*, 425 U.S. 130, 96 S. Ct. 1357, 47 L.Ed.2d 629 (1976), allows denial of preclearance for those changes that violate the Constitution. See *ante*, at 1499-1500. Thus, the majority apparently concedes that our "settled interpretation," *ante*, at 1500, of § 5 supports a denial of preclearance for at least some nonretrogressive changes.

[8] The amended version of § 2 tracks the language in *White v. Regester*, 412 U.S. 755, 766, 93 S. Ct. 2332, 2339-2340, 37 L.Ed.2d 314 (1973).

preserving the *White* standard, intended also that the Attorney General should continue to refuse to preclear plans violating that standard.

That intent is confirmed by the legislative history of the 1982 Act. The Senate Report states:

> "Under the rule of *Beer v. United States*, 425 U.S. 130, 96 S. Ct. 1357, 47 L.Ed.2d 629 (1976), a voting change which is ameliorative is not objectionable unless the change 'itself so discriminates on the basis of race or color as to violate the Constitution.' 425 U.S. at 141 [96 S. Ct. at 1364]; see also 142 n. 14 [96 S. Ct. at 1364, n. 14] (citing to the dilution cases from *Fortson v. Dorsey* [379 U.S. 433, 85 S. Ct. 498, 13 L.Ed.2d 401 (1965),] through *White v. Regester*.). In light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate section 2." S. Rep. No. 97-417, p. 12, n. 31 (1982) U.S. Code Cong. & Admin. News 1982 pp. 177, 189.

The House Report conveys the same message in different language. It unequivocally states that whether a discriminatory practice or procedure was in existence before 1965 (and therefore only subject to attack under § 2), or is the product of a recent change (and therefore subject to preclearance under § 5) "affects only the mechanism that triggers relief." H.R. Rep. No. 97-227, p. 28 (1981). This statement plainly indicates that the Committee understood the substantive standards for § 2 and § 5 violations to be the same whenever a challenged practice in a covered jurisdiction represents a change subject to the dic-

tates of § 5.[9] Thus, it is reasonable to assume that Congress, by endorsing the "unless" clause in *Beer*, contemplated the denial of pre-clearance for any change that clearly violates amended § 2. The majority by belittling this legislative history, abrogates Congress' effort, in enacting the 1982 amendments, "to broaden the protection afforded by the Voting Rights Act." *Chisom v. Roemer*, 501 U.S. 380, 404, 111 S. Ct. 2354, 2368, 115 L.Ed.2d 348 (1991).

Despite this strong evidence of Congress' intent, the majority holds that no deference to the Attorney General's regulation is warranted. The Court

[9] The postenactment legislative record also supports the Attorney General's interpretation of § 5. In 1985, the Attorney General first proposed regulations requiring a denial of preclearance "based upon violation of Section 2 if there is clear and convincing evidence of such a violation." 50 Fed. Reg. 19122, 19131. Congress held oversight hearings in which several witnesses, including the Assistant Attorney General, Civil Rights Division, testified that clear violations of § 2 should not be precleared. See Oversight Hearings before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act, 99th Cong., 1st Sess., 47, 149, 151-152 (1985). Following these hearings, the House Judiciary Subcommittee on Civil and Constitutional Rights issued a Report in which it concluded "that it is a proper interpretation of the legislative history of the 1982 amendments to use Section 2 standards in the course of making Section 5 determinations." Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, Voting Rights Act: Proposed Section 5 Regulations, 99th Cong., 2d Sess., Ser. No. 9, p. 5 (Comm. Print 1986). Although this history does not provide direct evidence of the enacting Congress' intent, it does constitute an informed expert opinion concerning the validity of the Attorney General's regulation.

suggests that had Congress wished to alter "our longstanding interpretation" of § 5, Congress would have made this clear. *Ante*, at 1496-1498. But nothing in our "settled interpretation" of § 5, *ante*, at 1500, is inconsistent with the Attorney General's reading of the statute. To the contrary, our precedent actually indicates that nonretrogressive plans that are otherwise discriminatory under *White v. Regester* should not be precleared. As neither the language nor the legislative history of § 5 can be said to conflict with the view that changes that clearly violate § 2 are not entitled to preclearance, there is no legitimate basis for refusing to defer to the Attorney General's regulation. See *Presley v. Etowah County Comm'n*, 502 U.S. 491, 508, 112 S. Ct. 820, 831, 117 L.Ed.2d 51 (1992).

II

In Part III of its opinion the Court correctly concludes that this action must be remanded for further proceedings because the District Court erroneously refused to consider certain evidence that is arguably relevant to whether the Board has proved an absence of discriminatory purpose under § 5. Because the Court appears satisfied that the disputed evidence may be probative of an "'intent to retrogress,'" it concludes that it is unnecessary to decide "whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." *Ante*, at 1501. For two reasons, I think it most unwise to reverse on such a narrow ground.

First, I agree with Justice BREYER, see *ante*, at 1505, that there is simply no basis for imposing this limitation on the purpose inquiry. None of our cases have held that § 5's purpose test is limited to retrogressive intent. In *Pleasant Grove v. United States*, 479 U.S. 462, 469-472, 107 S. Ct. 794, 798-801, 93 L.Ed.2d 866 (1987), for instance, we found that the city had failed to prove that its annexation of certain white areas lacked a discriminatory purpose. Despite the fact that the annexation lacked a retrogressive effect, we found it was subject to § 5 preclearance. *Ibid.*; see also *id.* at 474-475, 107 S. Ct. at 801-802 (Powell, J., dissenting) (contending that the majority erred in holding that a discriminatory purpose could be found even though there was no intent "to have a retrogressive effect"). Furthermore, limiting the § 5 purpose inquiry to retrogressive intent is inconsistent with the basic purpose of the Act. Assume, for example, that the record unambiguously disclosed a long history of deliberate exclusion of African-Americans from participating in local elections, including a series of changes each of which was adopted for the specific purpose of maintaining the status quo. None of those changes would have been motivated by an "intent to regress," but each would have been motivated by a "discriminatory purpose" as that term is commonly understood. Given the long settled understanding that § 5 of the Act was enacted to prevent covered jurisdictions from "contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination," *South Carolina v. Katzenbach*, 383 U.S. at 335, 86 S. Ct. at 822, it is inconceivable that Congress intended to authorize preclearance of changes adopted for the sole purpose of perpetuating an existing pattern of discrimination.

Second, the Court's failure to make this point clear can only complicate the task of the District Court on remand. If that court takes the narrow approach suggested by the Court, another appeal will surely follow; if a majority ultimately agrees with my view of the issue, another remand will then be necessary. On the other hand, if the District Court does not limit its consideration to evidence of retrogressive intent, and if it therefore rules against the Board, respondents will bring the case back and the Court would then have to resolve the issue definitively.

In sum, both the interest in orderly procedure and the fact that a correct answer to the issue is pellucidly clear, should be sufficient to persuade the Court to state definitively that § 5 preclearance should be denied if Judge Kessler's evaluation of the record is correct.

Accordingly, while I concur in the judgment insofar as it remands the action for further proceedings, I dissent from the decision insofar as it fails to authorize proceedings in accordance with the views set forth above.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. A. No. 94-1495 (LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, ATTORNEY GENERAL, DEFENDANT

and

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

[Filed: November 2, 1995]

BEFORE: SILBERMAN, Circuit Judge, RICHEY, and KESSLER, District Judges

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MEMORANDUM OPINION
OF THREE-JUDGE COURT
UNDER THE VOTING RIGHTS ACT

SILBERMAN, Circuit Judge.

INTRODUCTION

Plaintiff, Bossier Parish School Board, seeks preclearance under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, for its proposed redistricting. We shall grant the requested preclearance.

I.

Bossier Parish is located in northwestern Louisiana, bordered on the north by Arkansas. As reported by the 1990 census, Bossier Parish's population is 86,088, of whom 20.1% are black. Blacks constitute 17.6% of the voting age population of Bossier Parish and 15.5% of its registered voters. Bossier City, the Parish's most populous city, is located in the central western portion of the Parish and has a population of 52,721, of whom 17.95% are black. The black population is also concentrated in Benton, Plain Dealing, Haughton, and in the unincorporated community of Princeton.

Bossier Parish is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. At no time in Parish history have the Police Jury electoral districts included a district with a majority of black voters. Since 1983, however, a black police juror, Jerome Darby, has been elected three times from a majority-white district, the last time unopposed.[1]

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[1] The district from which Darby was elected in 1983 and 1987 was unique in Bossier Parish. Many of the white residents

The Police Jury undertook to redraw its electoral districts because of population shifts, as reflected in the 1980 census, that resulted in widely divergent populations among the existing districts. In November 1990, the Police Jury hired a cartographer, Gary Joiner, to assist in the process. At a public hearing on the Police Jury redistricting, black residents inquired about the possibility of creating majority-black districts, and were told that the black population of Bossier Parish was too far-flung to create any such district. On April 30, 1991, the Police Jury unanimously adopted one of the plans prepared by their cartographer as the final plan. The plan served the police jurors' incumbency concerns, and roughly provided for an even distribution of population among the districts. That same day, Concerned Citizens, a group of black residents of Bossier Parish, submitted a letter to the Police Jury complaining about the manner in which the redistricting plan was prepared and adopted. The plan was forwarded to the Attorney General on May 28, 1991, and, on July 29, 1991, the Attorney General precleared it. On January 11, 1994, the Police Jury unanimously voted to maintain the redistricting plan precleared by the Attorney General.

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of the district resided on or near Barksdale Air Force base and tended not to vote in Bossier Parish. This district, when the largely nonvoting military population is removed, was at least 45% black for the 1983 and 1987 Police Jury elections. In the 1991 Police Jury redistricting, however, the Air Force base was removed from Darby's district, after which he ran a successful, unopposed campaign.

The Bossier Parish School Board is constituted much like the Police Jury.[2] The School Board has 12 members elected from single-member districts to consecutive four-year terms. Both the Police Jury and School Board electoral districts have majority voting requirements: a candidate must receive a majority of the votes cast, not merely a plurality, to win an election. In the School Board's history, no black candidate has been elected to membership on the Board, though, as is discussed *infra*, one black School Board member was appointed to a vacant seat in 1992.

The Board, like the Police Jury, was also required to redraw its districts after the 1990 census. In fact, members of the Board had approached the Police Jury about the prospect of jointly redistricting, but were rebuffed by police jurors with incumbency concerns divergent from those of the School Board members.[3] The next scheduled election for the School Board was

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[2] At all relevant times, the Bossier Parish School Board has been the defendant in a lawsuit seeking the desegregation of the school district's schools. *Lemon v. Bossier Parish Sch. Bd.*, Civ. Act. No. 10,687 (W.D. La., filed Dec. 2, 1964). The School Board was found liable for intentionally segregating its public schools in violation of the Fourteenth Amendment in *Lemon v. Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La.1965), *aff'd*, 370 F.2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911, 87 S. Ct. 2116, 18 L.Ed.2d 1350 (1967). In 1979, the School Board sought a declaration of unitary status and release from continuing court supervision. The Board's motion was denied and the school district has yet to be declared a unitary system. Of the 27 schools in the school district, five have predominately black student populations. [Stip ¶ 242.] The student population of Bossier Parish's schools is roughly 29% black.

[3] Throughout the 1980s, the Police Jury and School Board maintained different electoral districts.

not until November 1994, and the School Board did not undertake the task of redistricting with particular urgency. In May 1991, the Board hired the same cartographer who had assisted the Police Jury with its redistricting, Gary Joiner. When he was hired, Joiner informed the Board that one readily available option was the Police Jury plan which had already been precleared by the Attorney General and which, if adopted by the Board, was sure to be precleared again. When he was hired, Joiner estimated that the redistricting would require 200 to 250 hours of his time.

At a Board meeting in September 1991, Board member Thomas Myrick suggested that the Board adopt the Police Jury plan. Myrick had participated in a number of meetings with Joiner and police jurors during their redistricting. No action was taken on Myrick's proposal.

On March 25, 1992, George Price, president of the local chapter of the NAACP and a defendant-intervenor in this case, wrote to the Board to express the NAACP's desire to be involved in every aspect of the redistricting process. Price received no response to his letter and, on August 17, 1992, wrote again, this time to say that the NAACP would dispute any plan that did not provide for majority-black districts. At an August 20, 1992 meeting of the School Board, Price presented a number of proposals concerning the management of the school district to the School Board, including the appointment of a black to fill the vacancy on the Board created by a Board member's departure. Sometime during August 1992, Board

members met individually with Joiner to review different options for redistricting.[4]

During the summer of 1992, the NAACP Redistricting Project in Baltimore, Maryland prepared a redistricting plan for the School Board that included two majority-black districts. Price presented the results of these efforts, a partial plan demonstrating the possibility of two majority-black districts, to a School Board official. Price was told that the School Board would not consider a plan that did not set forth all 12 districts. Price brought just such a plan to the September 3, 1992 meeting of the School Board. At that meeting, both Joiner and Bossier Parish District Attorney, James Buller, dismissed the NAACP plan

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[4] Testimony was presented that, during the redistricting process, members of the School Board made statements possibly indicating that the School Board was undertaking the redistricting with a discriminatory intent. S.P. Davis, attorney for Bossier Citizenship Education, Inc., a plaintiff-intervenor in *Lemon*, and a witness for defendant, testified that Board member Henry Burns told Davis that "while he personally favors having black representation on the board, other school board members oppose the idea." [U.S. Exh. 106, at 17.] George Price testified that Board member Barry Musgrove told Price that "while he sympathized with the concerns of the black community, there was nothing more he could do for us on this issue because the Board was 'hostile' toward the idea of a black majority district." [D-I Exh. B at ¶ 28.] Price further testified that Board member Thomas Myrick told Price and Thelma Harry, another intervenor and a member of the Benton City Council, that "he had worked too hard to get [his] seat and that he would not stand by and 'let us take his seat away from him.'" [*Id.* at ¶ 29; D-I Exh. E at ¶ 19.]

because the plan required splitting a number of voting precincts.[5]

Under Louisiana law, school board districts must contain whole voting precincts (*i.e.*, they may not split voting precincts). *See* Louisiana Revised Statutes, Title 17, § 71.3E.(1) ("The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority. . . ."). While there has been dispute over the matter, the parties have stipulated that school boards redistricting around the time the Bossier Parish School Board was redistricting were "free to request precinct changes from the Police Jury necessary to accomplish their redistricting plans." [Stip ¶ 23.] Defendant-intervenors' witness, David Creed, testified that he himself had routinely drawn redistricting plans that split precincts. The largest number of precincts that Creed had ever split was eight—far fewer than the 46 precinct splits resulting under the NAACP plan that was presented to the Board or any other plan proffered since by defendant or defendant- intervenors. In any event, the School Board never approached the Police Jury to request precinct changes.

On September 10, 1992, the School Board interviewed candidates for the one vacant seat on the School Board. By a six-to-five vote, the School Board appointed the only black candidate, Jerome Blunt. Defendant-Intervenors contend that this appointment

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[5] Both the Police Jury plan and the NAACP plan appear in an appendix to this opinion.

came despite "bitter opposition from white voters." [D-I Br. at 15.] On September 17, 1992, Blunt was sworn in as a Board member. His term in office lasted six months, ending in a special-election defeat to a white candidate. The vacant seat to which Blunt was appointed represented a district with the population that was 11% black.

At the same meeting during which Blunt took the oath of office, the School Board passed a motion of intent to adopt the Police Jury plan. The School Board announced that a public meeting would be held on September 24, 1992, with final action to be taken on the plan on October 1, 1992.

At the September 24, 1992 meeting, the School Board meeting room was filled to overflowing. Price presented the Board with a petition signed by more than 500 residents of the Parish asking that the Board consider alternative redistricting plans. Additionally, a number of black residents addressed the Board to express their opposition to the proposed Police Jury plan. No one spoke in support of the plan. On October 1, 1992, the School Board unanimously adopted the Police Jury plan. Although he had taken office in time to vote on the plan, Jerome Blunt abstained. One other School Board member, Barbara W. Gray, was absent and did not vote.

The plan adopted by the School Board pits two pairs of incumbents against each other, leaving two districts with no incumbents. The plan does not distribute the school district's schools evenly among the electoral districts: some have several schools, others have none.

On January 4, 1993, the School Board submitted its proposed redistricting plan to the Attorney General. On March 5, 1993, the Attorney General requested more information on the redistricting plan, which the School Board provided. On August 30, 1993, the Attorney General interposed a formal objection to the School Board's plan. The Attorney General's letter indicated that, while the identical Police Jury plan had been precleared, the Attorney General objected on the basis of "new information." The Attorney General noted that an alternative plan which showed "that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts" and which was preferred by members of the black community had been presented to and rejected by the School Board. The Attorney General further cited the School Board's failure to "accommodate the requests of the black community."

The Attorney General's objection letter stated that, while the School Board was not required to "adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." The Attorney General rejected the School Board's argument that the Louisiana statute concerning splitting precincts was sufficient reason not to create majority-black districts.

On September 3, 1993, the School Board unanimously voted to seek reconsideration of the objection from the Attorney General. On December 20, 1993, the Attorney General denied the Board's request for

reconsideration. The School Board filed this action on July 8, 1994. On April 10 and 11, 1995, this matter was tried before a single judge of this panel, pursuant to an agreement of the parties. The record of those proceedings has been provided to the other two judges on the panel and closing argument was conducted before the entire panel on July 27, 1995.

In the course of this litigation, defendant-intervenors have prepared two more plans that provide for two majority-black districts. Both plans were prepared by defendant-intervenor's witness, William Cooper. The first plan (Cooper I) provides for one majority-black district in the northwestern corner of the parish and one in Bossier City. The second plan (Cooper II) is not materially different. Neither of these plans was before the School Board when it adopted the Police Jury plan.[6]

II.

For a political subdivision subject to section 5 to obtain preclearance of a voting change, it must prove that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. All parties agree that the "effect" prong of section 5 requires a showing of retro-

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[6] Because we hold, as is discussed below, that section 2 of the Voting Rights Act, 42 U.S.C. § 1973, has no place in this section 5 action, much of the evidence relevant only to the section 2 inquiry is not discussed in this opinion. We, of course, express no opinion on the merits of any case that may be filed under section 2.

gression. *See Beer v. United States*, 425 U.S. 130, 141, 96 S. Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). And, all parties agree that the School Board's proposed redistricting will not have a retrogressive effect. The case, then, turns on whether plaintiff can by a preponderance of the evidence demonstrate that the redistricting plan was enacted without discriminatory purpose.

The School Board claims to have proved that a variety of nondiscriminatory purposes animated the School Board when they adopted the Police Jury plan. The School Board adopted the Police Jury plan because it had been precleared by the Attorney General and would provide an easy way to avoid the controversy that increasingly surrounded the redistricting process. Further, the Police Jury plan required that no precincts be split, avoiding the difficulty and expense that would have accompanied any other plan, and particularly the only other plan the School Board had seen: the NAACP plan. The School Board have throughout the litigation proffered a series of other purposes said to have motivated the decision to adopt the Police Jury plan. Among these were a desire to adhere to traditional districting principles and to avoid racial gerrymandering.

Defendant asserts that preclearance should be denied for at least one of several reasons. Defendant argues that we should deny preclearance because the School Board's redistricting plan violates section 2 of the Voting Rights Act. If we conclude that we may not engage in the section 2 inquiry in this section 5 case, defendant contends that we may nonetheless consider the School Board's violation of section 2 as

evidence of its discriminatory purpose. Defendant and defendant-intervenors further argue that we should deny preclearance based on "direct" and "indirect" evidence that the School Board acted with a discriminatory purpose.

III.

A.

Defendant and defendant-intervenors maintain that preclearance must be denied if the School Board's plan runs afoul of section 2 of the Voting Rights Act.[7] We hold, as has every court that has considered the question, that a political subdivision that does not violate either the "effect" or the "purpose" prong of section 5 cannot be denied preclearance because of an alleged section 2 violation.

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[7] Plaintiffs "stipulated" that "[s]ection 5 preclearance of the Bossier Parish School Board's redistricting plan also must be denied if the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973." [Stip ¶ 257.] Why plaintiffs would stipulate to a legal conclusion that no court considering the question has ever agreed to is beyond us. That plaintiffs did so stipulate does not, however, put the question beyond us. See *Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 99, 111 S. Ct. 1711, 1718, 114 L.Ed.2d 152 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law."). In any event, plaintiff's strenuous argument that *Miller v. Johnson*, — U.S. ——, 115 S. Ct. 2475, 132 L.Ed.2d 762 (1995), is dispositive of this case is apparently inconsistent with its stipulation.

Defendant puts before us many arguments for the inclusion of section 2 in this section 5 action. Defendant contends that the statutory language of section 2 and section 5 are in significant part so indistinguishable as to require the importation of section 2 into section 5. It is also argued that the legislative history of section 2 makes clear that Congress, in amending section 2, intended that voting practices be denied section 5 preclearance where those voting practices violate section 2. Defendant finally contends that this court should defer to defendant's own regulations, which interpret section 5 as requiring denial of preclearance where a proposed change violates section 2.

Defendant has presented many, if not all, of these arguments to other courts and to other panels of this court without any success. Defendant acknowledges these prior cases, but claims that they are distinguishable from the one before us. We, like our predecessors, reject defendant's latest—and by now rather shopworn—effort to squeeze section 2 into section 5.

We are unconvinced by defendant's casual effort to equate the standards of section 2 and section 5. In its brief, defendant asserts that "there is no meaningful distinction between the plain meaning of the term [*sic*] 'effect' and 'result.'" [Def. Br. at 28.] To reach this facile conclusion, one must willfully blind oneself to the fact that the term "results" in subsection (a) of section 2 is defined by reference to the language set forth in subsection (b) of section 2. 42 U.S.C. § 1973. None of the language that modifies "results" in section 2 appears in section 5.

Not only are the two sections drafted with different language, even a cursory review of the case law applying the two statutory sections as written and as applied over the years makes clear that the two sections serve very different functions.

Section 5 of the Voting Rights Act establishes an extraordinary procedure in our federal system. Before a "covered jurisdiction"—*i.e.*, a State or one of its political subdivisions which is subject to section 5—may change a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," it must have the change precleared by either this court or the Attorney General.[8] *Id.*

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[8] A "covered jurisdiction" is a "State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of [title 42] based upon determinations made under the first sentence of section 1973b(b) of [title 42] are in effect." The prohibitions apply to any State or political subdivision

> which (i) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (ii) the Plaintiff's [*sic*] Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

42 U.S.C. § 1973b(b). A "test or device" is

> any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

§ 1973c. Preclearance in this court comes in the form of "a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in . . . this title." *Id.* § 1973c.

The Supreme Court has read the "effect" prong of section 5 to require that "no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141, 96 S. Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). This "nonretrogression" interpretation has repeatedly been reasserted by the Supreme Court, most recently in *Miller v. Johnson*, — U.S. ——, ——, 115 S. Ct. 2475, 2493, 132 L.Ed.2d 762 (1995).

This formulation relates directly to section 5's function. Section 5 was enacted in response to the efforts of jurisdictions to avoid compliance with the Voting Rights Act by adopting new, violative schemes as quickly as the old ones could be struck down. *See Beer*, 425 U.S. at 140, 96 S. Ct. at 1363. "'By freezing election procedures in the covered areas unless the changes can be shown to be non-discriminatory,' section 5 ensures that a plaintiff seeking to challenge an existing voting scheme in federal court under section 2 will have a stationary target to attack." *New York v. United States*, 874 F.

Id. § 1973b(c). The Bossier Parish School Board is indisputably a "covered jurisdiction."

Supp. 394, 400 (D.D.C.1994) (quoting *Beer*, 425 U.S. at 140, 96 S. Ct. at 1363 (internal citations omitted)).

Section 2 of the Voting Rights Act uses plainly different language and serves a different function from that of section 5. Under section 2, a "voting qualification or prerequisite to voting or standard, practice, or procedure" in any political subdivision (not just a covered jurisdiction) may be challenged where it "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Subsection (b) of section 2 provides that a voting procedure has the prohibited result where

> based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. § 1973(b). Subsection (b) contains a different standard from the retrogression standard found by the Supreme Court in section 5; as courts have since recognized, section 2 can be violated without any discriminatory purpose and irrespective of whether the disputed voting practice is better or worse than whatever it is meant to replace. *See Thornburg v. Gingles*, 478 U.S. 30, 42-47, 106 S. Ct. 2752, 2761-64, 92 L.Ed.2d 25 (1986). Sections 2 and 5 are substantially different, both on their face and in the manner in which they have been interpreted and applied. *See*

Holder v. Hall, 512 U.S. 874, ——, 114 S. Ct. 2581, 2587, 129 L.Ed.2d 687 (1994) ("To be sure, if the structure and purpose of section 2 mirrored that of section 5, then the case for interpreting sections 2 and 5 to have the same application in all cases would be convincing. But the two sections differ in structure, purpose, and application." (footnote omitted)).

Moreover, the two sections differ as to the allocation of the burden of proof. In an action under section 5, the burden of proof is on the political subdivision seeking to enact a voting change. In a section 2 action, on the other hand, the burden of proof is on the party challenging a voting practice. *See, e.g., Hall v. Holder*, 955 F.2d 1563, 1573-74 (11th Cir.1992), *rev'd on other grounds*, 512 U.S. 874, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994); *Solomon v. Liberty County*, 899 F.2d 1012, 1036 (11th Cir.1990) (*en banc*) (Tjoflat, J., specially concurring); *cert. denied*, 498 U.S. 1023, 111 S. Ct. 670, 112 L.Ed.2d 663 (1991); *see also Burton v. Sheheen*, 793 F. Supp. 1329, 1351-52 (D.S.C.1992) (declining to import section 2 into section 5 because, *inter alia*, of the differing burdens of proof), vacated on other grounds *sub nom. Statewide Reapportionment Advisory Comm. v. Theodore*, 508 U.S. 968, 113 S. Ct. 2954, 125 L.Ed.2d 656 (1998); *City of Port Arthur v. United States*, 517 F. Supp. 987, 1005 n. 119 (D.D.C. 1981) (rejecting claim that section 2 action can collaterally estop section 5 action because, *inter alia*, burdens of proof in each case are different), *aff'd*, 459 U.S. 159, 103 S. Ct. 530, 74 L.Ed.2d 334 (1992). That crucial procedural difference strongly suggests the inappropriateness of importing section 2 standards into section 5.

Defendant's reliance on the legislative history of the amendments to section 2 is similarly unavailing. Where the language of a statutory regime is unambiguous, as it is here, we need not resort to that regime's legislative history. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149, 117 L.Ed.2d 391 (1992). Even if the language of sections 2 and 5 did not plainly contemplate two different and independent inquiries, we would not be persuaded that what little legislative history defendant has discovered is sufficient to justify the radical expansion of an already significant encroachment on the prerogatives of States and their subdivisions. Defendant bases its recourse to legislative history in a footnote from the Senate Report that accompanied the 1982 amendments to section 2: "In light of the amendment to Section 2, it is intended that a Section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2." S. Rep. No. 97-417, 97th Cong., 2d Sess. at 12 n. 31 (1982) U.S.Code Cong. & Admin. News 1982 pp. 177, 189. Defendant also provides quotes to this effect from two sponsors of the 1982 amendments. The footnote appears in a report that accompanied the 1982 overhaul of section 2 that was precipitated by and intended to repudiate *Mobile v. Bolden*, 446 U.S. 55, 100 S. Ct. 1490, 64 L.Ed.2d 47 (1980). *Georgia v. Reno*, 881 F. Supp. 7, 13 (D.D.C. 1995). In *Mobile*, a plurality of the Supreme Court held that proof of discriminatory purpose was required for a section 2 violation. "The [footnote] cited by the defendants was intended merely to emphasize that proof of the requisite unlawful effect is in itself sufficient under either section, regardless of motive." *Id.* At that time, section 2 was wholly rewritten to provide that no

proof of discriminatory purpose is required in actions brought under it; section 5 remained—and remains today—as it had been written in 1975. In the face of the palpably different standards plainly embodied in sections 2 and 5, we think it not plausible that Congress would indicate its desire to raise the hurdle to preclearance by adding the requirements of section 2 to section 5 in a Senate Report footnote. *Accord Arizona v. Reno*, 887 F. Supp. 318 (D.D.C.1995). Had Congress plainly expressed this intention, we would be bound to follow. It did not and we are not.

The Department argues in its brief—although it appeared to retreat from this contention at closing argument—that an additional reason for the court to import section 2 into section 5 is that the Department of Justice has promulgated regulations stating that preclearance under section 5 ought to be denied where the proposed voting change violates section 2. *See* 28 C.F.R. § 51.55(b)(2) ("In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold section 5 preclearance."). The Department asserts that "the Attorney General's interpretations of the Act are entitled to great deference." [Def. Br. at 31.] Wherever else the Attorney General's interpretation of section 5 of the Voting Rights Act may be entitled to deference, it certainly is not in this court. We will not defer to the Attorney General where, under the statute, an action seeking preclearance may be brought here in the first instance. *See Litton Fin.*

Printing Div. v. NLRB, 501 U.S. 190, 203, 111 S. Ct. 2215, 2223, 115 L.Ed.2d 177 (1991) (citing *Local Union 1395, Int'l Brotherhood of Elec. Workers v. NLRB*, 797 F.2d 1027, 1030-31 (D.C. Cir. 1986)); *Kelley v. EPA*, 15 F.3d 1100, 1108 (D.C. Cir. 1994) ("Even if an agency enjoys authority to determine such a legal issue administratively, deference is withheld if a private party can bring the issue independently to federal court under a private right of action."), *cert. denied sub nom. American Bankers Ass'n v. Kelley*, 513 U.S. 1110, 115 S. Ct. 900, 130 L.Ed.2d 784 (1995); *cf. Michigan Citizens for an Indep. Press v. Thornburgh*, 868 F.2d 1285, 1293 (D.C. Cir.), *aff'd*, 493 U.S. 38, 110 S. Ct. 398, 107 L.Ed.2d 277 (1989).

As we have noted, all courts to have considered the question have decided that section 2 may not be imported in section 5. *See Texas v. United States*, Civ. Act. No. 94-1529, Mem. Op. at 1-3, 1995 WL 769160 (D.D.C. July 10, 1995); *Arizona v. Reno*, 887 F. Supp. at 320-21; *Georgia v. Reno*, 881 F. Supp. at 13-14; *New York v. United States*, 874 F. Supp. 394 (D.D.C. 1994); *see also Burton v. Sheheen*, 793 F. Supp. at 1350-53. Defendant would distinguish these cases, insisting that the other panels refused to import section 2 into section 5 cases because the only alleged section 2 violation was the addition of judgeships to an already existing, already violative system for the election of judges.[9] *See Texas*; *Arizona*; *Georgia*; *New York*.

[9] Defendant also argues that these cases are wrongly decided and that as "the decisions of co-equal panels of this Court do not constitute binding precedent on this Court." [Def. Br. at 33.] Although we need not be bound by the decisions of co-equal panels, *see In re Korean Air Lines Disaster*, 829 F.2d 1171, 1176 (D.C. Cir.1987), *aff'd sub nom.*

[Def. Br. at 34.] In this case, defendant contends that the proposed voting change is itself a violation of section 2 and that preclearance must therefore be denied. We are not persuaded. The reasoning used by the prior courts is just as applicable here, regardless of whether a given voting change is styled as an addition to a system that allegedly violates section 2 or a violation of section 2 itself. The statute does not provide for importation of section 2 into section 5, and the particular circumstances of a given section 5 preclearance action can make no difference whatsoever.

In its discussion of the importation of section 2 into section 5, defendant makes no mention of *Miller v. Johnson*. In *Miller*, the Attorney General denied preclearance for the Georgia General Assembly's congressional redistricting plan until it provided for three majority-black districts. — U.S. at ——, 115 S. Ct. at 2489. In finding that the General Assembly had made race the "predominant factor" in its redistricting and thereby violated the Equal Protection Clause, the Court held that the manner in which the Attorney General had employed section 5 of the Voting Rights Act was "insupportable," and that the Attorney General's incorrect interpretation of section 5 could not be a compelling state interest sufficient to survive strict scrutiny. *Id.* — U.S. at ——, 115 S. Ct. at 2492. Although much of the discussion in *Miller* con-

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Chan v. Korean Air Lines, Ltd., 490 U.S. 122, 109 S. Ct. 1676, 104 L.Ed.2d 113 (1989), we certainly can be persuaded by them, particularly given the three-judge constitution of these panels and the fact that, in this curious corner of the law, the only entity besides co-equal panels of this court that can ever consider these questions is the Supreme Court.

cerns the Equal Protection clause, *Miller* is very much a statutory interpretation case. The Supreme Court, rather than decide the constitutional question of whether compliance with the Voting Rights Act could serve as a compelling state interest, expressly repudiated the Department's interpretation of section 5. *Id.* — U.S. at —— - ——, 115 S. Ct. at 2490-91. The Court noted that the purpose of section 5 is to avoid retrogression in the position of minority voters, and stated that the "Justice Department's maximization policy seems quite far removed from this purpose." *Id.* — U.S. at ——, 115 S. Ct. at 2493. "In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld." *Id.* The Supreme Court further observed that it had upheld section 5 in *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S. Ct. 803, 15 L.Ed.2d 769 (1966), as a

> necessary and constitutional response to some states' "extraordinary stratagem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." . . . But [its] belief in *Katzenbach* that the federalism costs exacted by § 5 preclearance could be justified by those extraordinary circumstances does not mean they can be justified in the circumstances of this case.[10]

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[10] The federalism costs of section 5 (even without the importation of section 2) have been noted throughout its history. *See Georgia v. United States*, 411 U.S. 526, 545, 93 S. Ct. 1702, 1713, 36 L.Ed.2d 472 (1973) (Powell, J., dissenting) ("It is

Id. (quoting *Katzenbach*, 383 U.S. at 335, 86 S. Ct. at 822).

Although *Miller* makes no explicit reference to the injection of section 2 into section 5, the import of the opinion on this issue is clear. So long as the standard for the "effect" prong of section 5 remains "nonretrogression," the only way for defendant to require the creation of additional majority-black districts before preclearance will be granted is to import the standards of section 2 into the section 5 preclearance process. The very language with which the Attorney General objected to the School Board's redistricting plan makes plain that section 2's standards informed the Attorney General's objection to the School Board's plan. *Miller*,[11] however, makes crystalline

indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a State to submit its legislation for advance review."); *South Carolina v. Katzenbach*, 383 U.S. at 359-60, 86 S. Ct. at 834 (Black, J., dissenting in part) ("[section] 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that 'The United States shall guarantee to every State in this Union a Republican Form of Government' "); *Georgia v. Reno*, 881 F. Supp. at 13 n. 8 (noting that the "extraordinary nature of section 5" argued against importing section 2 into section 5).

[11] Compare the Attorney General's August 30, 1993 letter ("[T]he proposed plan, adopted by the parish police jury and recommended by the school board's consultant, *would appear to provide no opportunity for black voters to elect a candidate of their choice* to the school board." (emphasis added)) with section 2 (a violation of section 2 is proved where "it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [minority citizens] in that [they] have *less opportunity*

what was already clear: section 2 and its standards have no place in a section 5 preclearance action. *See also Texas v. United States*, Civ. Act. No. 94-1529, Mem. Op. at 2-3.

In what may by now be a conditioned response, defendant argues that even if we decide that a section 2 action cannot be brought in a section 5 preclearance proceeding, we must still consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5. We again disagree. As we have said, the statutory language sets forth differing standards for the two sections. The line cannot be blurred by allowing a defendant to do indirectly what it cannot do directly. The federalism costs already exacted by section 5 are seriously increased if, under the guise of "purpose" evidence, alleged section 2 violations must be countered by the political subdivision whenever it seeks preclearance. *See New York v. United States*, 874 F. Supp. at 399 ("Were we to accept defendant's theory that discriminatory intent may always be inferred from the existence of an allegedly discriminatory system, nearly every section 5 preclearance proceeding could potentially be transformed into full-blown section 2 litigation. We think a rule creating such a state of affairs both unwarranted and unwise."). And, *Miller* forecloses the permitting of section 2 evidence in a section 5 case. As a panel of this court recently noted,

than other members of the electorate to participate in the political process and to *elect representatives of their choice*" (emphasis added)).

> the Court [in *Miller*] reaffirmed that the "purpose" prong of section 5 must be analyzed within the context of section 5's purpose, which "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."

Texas v. United States, Civ. Act. No. 94-1529, Mem. Op. at 2 (July 10, 1995) (quoting *Miller*, — U.S. at ——, 115 S. Ct. at 2493). Given the variety of good reasons not to import section 2 into section 5, we will not permit section 2 evidence to prove discriminatory purpose under section 5.[12]

B.

The parties agree that the proposed redistricting will not result in retrogression of minority voting strength in Bossier Parish, and thus, that the "effect" prong of Section 5 is not in issue. The

[12] At closing argument, defendant's counsel was presented with the question of whether a school board that affirmatively decides not to take race into account in any way could be found to have violated section 5. Counsel stated that a school board with the history and context of the Bossier Parish School Board declined to take race into account would indeed violate section 5. This strikes us as double counting. The reason the Bossier Parish School Board is subject to section 5 at all is, at least in part, because of its history and context. Now that it is subject to section 5, defendant would again cite the School Board's history as a reason to saddle it with the additional burden of affirmatively taking race into account in order to prove that it did not have the proscribed purpose.

statute requires a covered political subdivision seeking a declaratory judgment to prove that the proposed voting change "does not have the purpose *and* will not have the effect of denying or abridging the right to vote." 42 U.S.C § 1973c (emphasis added).

Plaintiff bears the burden of proving that it did not adopt the Police Jury plan with a discriminatory purpose. *Rome v. United States*, 446 U.S. 156, 183, 100 S. Ct. 1548, 1565, 64 L.Ed.2d 119 (1980) ("Under [section] 5, the city bears the burden of proving lack of discriminatory purpose and effect."). All courts agree that the entity seeking preclearance has the burden of proving that the proposed change has neither a discriminatory effect nor a discriminatory purpose. How this plays itself out in litigation has been left largely unexplored. But it must be recognized that placing a burden of proving nondiscrimination on the plaintiff is anomalous under our law; the plaintiff is put in the position of proving a negative.[13]

Courts have devised complex burden-shifting regimes for litigation under Title VII and section 2 of the Voting Rights Act. In an action under Title VII, a plaintiff complaining of discrimination in the employment context must set forth a prima facie case of discrimination. At that point, the burden shifts to the employer to prove that the complained-of employment action was undertaken for other, nondiscriminatory reasons. The burden then shifts back to the plaintiff

[13] It is particularly anomalous where the voting change has no retrogressive effect and the political subdivision thus bears the burden of proving that when it did nothing bad, it did so with a non-bad motive.

to prove that the employer's offered reasons are pretextual. *See, e.g., Johnson v. Transportation Agency*, 480 U.S. 616, 628, 107 S. Ct. 1442, 1450, 94 L.Ed.2d 615 (1987); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). Similarly, courts in section 2 cases have held that once the plaintiff establishes a prima facie case of vote dilution, the burden shifts to the political subdivision to prove that the voting regime does not result in, or have as its purpose, discrimination. *See, e.g., Hall v. Holder*, 955 F.2d 1563, 1573-74 (11th Cir. 1992), *rev'd on other grounds*, 512 U.S. 874, 114 S. Ct. 2581, 129 L.Ed.2d 687 (1994); *Solomon v. Liberty County*, 899 F.2d 1012, 1036 (11th Cir. 1990) (*en banc*) (Tjoflat, J., specially concurring). In actions under both Title VII and section 2, the burden-shifting regimes were enacted in order to alleviate the difficulty for plaintiffs of proving that defendants acted with discriminatory intent. These procedural services thus do not appear appropriate to a section 5 case.

To be sure, something like a burden shifting must occur in this, as in every other, civil case. Once the Board makes out its prima facie case, it is entitled to preclearance unless its prima facie case is rebutted. *See Director, Office of Workers' Compensation Programs, Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267, ——, 114 S. Ct. 2251, 2259, 129 L.Ed.2d 221 (1994) ("[W]hen the party with the burden of persuasion establishes a prima facie case supported by 'credible and credited evidence,' it must either be rebutted or accepted as true"). If it is rebutted, then we must weigh the School Board's evidence against that proffered on the other side. If the evidence is equally convincing on either side, the School Board—bearing

the risk of nonpersuasion—must lose. *See McCain v. Lybrand*, 465 U.S. 236, 257, 104 S. Ct. 1037, 1050, 79 L.Ed.2d 271 (1984) (in the preclearance process, "the burden of proof (the risk of non-persuasion) is placed upon the covered jurisdiction"). If, however, the School Board's evidence is more persuasive than the evidence proffered against it, the School Board is entitled to preclearance. To make out a *prima facie* case for preclearance, the School Board must demonstrate that the proposed change will have no retrogressive effect, and that the change was undertaken without a discriminatory purpose. Proof of nondiscriminatory purpose must include "legitimate reasons" for settling on the given change. *Richmond v. United States*, 422 U.S. 358, 375, 95 S. Ct. 2296, 2306, 45 L.Ed.2d 245 (1975). When the *prima facie* case has been made by the School Board, defendant must offer evidence in rebuttal in order to prevent preclearance.[14]

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[14] A panel of this court recently stated that, in order to prove that it has not acted with the prohibited intent, the section 5 plaintiff, "[a]s a practical matter," must come forward with evidence of legitimate, nondiscriminatory motives for the proposed changes to the voting laws. In addition, the plaintiff must furnish some affirmative evidence that the proposed changes were not motivated by a discriminatory purpose. Once the section 5 plaintiff has made such a showing, the burden shifts to the Attorney General, as the party resisting preclearance, to provide some evidence of a discriminatory purpose on the part of the legislators who seek to make the change. In the absence of such a showing, the section 5 plaintiff will be found to have carried its burden of establishing a lack of discriminatory purpose. *New York v. United States*, 874 F. Supp. at 400. That opinion, unfortunately, did not cite any authority for this division of the burden of proof.

The School Board has offered a host of non-discriminatory reasons for adopting the Police Jury plan. We are satisfied that at least two of these are "legitimate, nondiscriminatory motives," *New York*, 874 F. Supp. at 400.[15]

The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing). The School Board did not like the Police Jury plan when it was first presented to them, and there were certainly reasons not to. The Police Jury plan wreaked havoc with the incumbencies of four of the School Board members and was not drawn with school locations in mind. When, however, the redistricting process began to cause agitation within the black community, and when it became obvious that any plan adopted by the School Board would give rise to controversy and division (and we find that by the time the NAACP's redistricting plan had been presented to the School Board, the Board could very reasonably foresee this), the Police Jury plan became, as Board member Myrick described it, "expedient." Any port will do in a storm, and when the clouds over the School Board's redistricting process began to grow ominous, the *only* close port was the already precleared Police Jury plan.

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[15] In the course of litigation, the School Board has offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons. At one point, the School Board maintained that it adopted the plan (on October 1, 1992) to avoid running afoul of *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816, 125 L.Ed.2d 511 (1993) (decided June 28, 1993).

Defendant and defendant-intervenors contend that the Police Jury plan itself was precleared by the Attorney General only because relevant information was withheld from the Attorney General. In order for this to be evidence that the School Board adopted the Police Jury plan with an impermissible purpose, the School Board would have to have known that such information had been withheld from the Attorney General, and that but for that withholding, the Attorney General would not have precleared the Police Jury plan. We know of no evidence even suggesting the School Board had any knowledge that the Police Jury plan had been precleared illegitimately if in fact it had been.

Further, the Police Jury plan would require no splitting of precincts. While the evidence on the effect of a school board's efforts to redistrict in a way that splits precincts is confused, what is uncontroverted is that changing precincts is neither guaranteed nor free. The NAACP plan presented to the School Board—the only other plan available to the school board at the time—split at least 46 precincts. Defendant-intervenors' witness, David Creed, who testified that precinct-splitting was quite common and that he himself had drawn several redistricting plans that split precincts, [D-I Exh. F at 2-3], had never drawn a plan that split more than eight precincts. [Tr. II, at 119.] Splitting precincts would have required assistance from the Police Jury—a body that had rebuffed the School Board's earlier overtures for coordinated efforts. And, the splitting of precincts would have cost money. Evidence was presented that each precinct split would cost $850, and even if this number was substantially overstated, no one suggests

that precincts can be split for free. When the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts. It hired the Police Jury's cartographer with the expectation that he would spend a substantial amount of time on the project, and it was given maps of the then-existing precincts and told it would have to work with the Police Jury with respect to the precincts. Nonetheless, the School Board entirely reasonably could have, when faced with the NAACP's plan, arrived quickly at the conclusion that zero precinct splits was significantly more desirable than 46.

Moreover, in the midst of the controversy, at the behest of the black community, and over the "bitter opposition" of some white constituents, the School Board itself appointed a black member to its only vacant seat in time to participate in and vote on the adoption of the Police Jury plan. Defendant tries to minimize this fact by noting that the vote was only six to five, that Jerome Blunt was appointed to a district that was 89% white, and that Blunt promptly lost in a special election six months later. That Blunt was appointed by a bare majority tells us nothing more than that at least a majority of the white Board members were responsive to the black community and were not opposed to black representation on the School Board. That Blunt lost his next election cannot, we think, be fairly laid at the School Board's door, particularly given that the district to which he was appointed—again, at the behest of George Price and others—was the only one with a vacancy. This appointment, particularly when its timing and context are considered, indicates that a majority of the white Board members not only were not opposed to

black representation on the School Board, but affirmatively brought it about for the first time in Parish history.

The School Board thus has presented a *prima facie* case for preclearance. Defendant seeks to rebut this case by presenting what it styles as "direct" and "indirect" evidence of discriminatory purpose.

The "direct" evidence presented by defendant and defendant-intervenors consists of the alleged statements of three School Board members. We conclude that none of the statements attributed to these Board members, if they were in fact made, show that the Board acted with a discriminatory motivation. The first statement offered by defendant is perhaps the most troubling. S.P. Davis, an attorney representing a plaintiff-intervenor in the *Lemon* suit, testified that Board member Henry Burns told him that, while Burns himself had no opposition to the idea, other members of the Board were "hostile to black representation on the School Board."[16] Plaintiffs did not cross-examine Davis on this point, so we do not know more specifically what Davis understood Burns to mean by "black representation." The phrase is subject to at least two interpretations. We would be troubled indeed if Burns was referring to hostility on the part of other Board members to the presence of black persons as members of the School Board. But, because at least six of the School Board members proved their lack of hostility to this sort of black

[16] We note the difficulty involved in giving weight to testimony as to an out-of-court statement by a third party concerning the mental state of other, unnamed third parties.

representation by appointing a black Board member, we do not believe that Burns meant this. If Burns meant, by "black representation," that other members of the School Board were opposed to the intentional drawing of majority-black districts in order to ensure black representation on the Board, that is hardly an indication of discriminatory purpose unless section 5 imposes an affirmative obligation to draw additional majority-black districts. There are a host of entirely legitimate reasons to oppose this sort of district-drawing. A Board member could, for example, be opposed to districts that split numerous precincts or that violated traditional districting principles.

Board member Barry Musgrove's alleged statement to George Price that, while Musgrove was not personally opposed, other Board members were hostile to drawing majority-black districts is also relied upon by defendant. Musgrove denies making this statement, [Tr. I, at 56.], but we will assume for this analysis that he said what Price says he said. But again, this statement is not evidence of discriminatory purpose. A Board member could have any number of perfectly legitimate reasons to oppose the drawing of majority-black districts, particularly in the manner of the NAACP plan. Without more than Price's testimony, we will not assume the worst and credit the unnamed School Board members with an untoward motivation when the statement lends itself just as easily to a nondiscriminatory interpretation.

The last Board-member statement emphasized by defendant is that of Thomas Myrick, as testified to by intervenors George Price and Thelma Harry, that Myrick would not let his seat be taken. But, we do not

attribute a racist motivation to the perfectly understandable expression by an incumbent of the strong desire not to have his district so changed that his constituency is obliterated. Even if Myrick's statement was an indication of a discriminatory purpose on Myrick's part—which we do not think it was—on this record it would be inappropriate to attribute such a purpose to the other nine members of the Board who voted to adopt the Police Jury plan.[17]

The "indirect" evidence defendant most heavily relies upon is the "sequence of events leading to the school board's adoption of the police jury plan." [Def. Br. at 15.] Defendant argues that these events raise an inference that the plan was adopted with a discriminatory purpose. Defendant notes that when the Police Jury plan was first presented to the Board, the Board declined to adopt it, in part because it pitted two pairs of incumbents against each other. Defendant also emphasizes the Board's unwillingness to permit participation in the redistricting process by George Price and the NAACP; most of the redistricting work done by the Board was not done publicly. And, defendant argues, and regards as the nail in the School Board's coffin, that the Board "rushed to adopt the police jury plan" only after it "was confronted with the NAACP's plan." [Def. Br. at 18.] If the only evidence before us were that summarized here and relied on so heavily by the

[17] When asked at oral argument for the best evidence of discriminatory purpose, counsel for defendant-intervenors pointed to the remarks of the school board members. Our dissenting colleague thinks little of this evidence: "These statements standing alone would certainly be insufficient to show discriminatory purpose." Dissent at 459.

defendant, we would still have difficulty following its inferential leap. We think that assuming that the quick rejection of the NAACP plan is probative of a discriminatory purpose requires at least that the Board have regarded the NAACP plan as a plausible plan. We have no evidence that the plan was, as an objective matter, plausible (after all, it split 46 precincts and is no longer seriously put forward by either defendant or defendant-intervenors). And, we have no indication that the School Board itself thought the plan plausible. The existence of the NAACP plan demonstrated to the Board that its efforts to redistrict would be subject to exacting review and vociferous criticism. The swift selection of the only plan around that bore the imprimatur of the Attorney General resembles not a brazen stroke in the name of racist redistricting but an understandable, if not necessarily laudable, retreat from a protracted and highly charged public battle. In light of this, and mindful of the Board's demonstrable willingness to *ensure* black representation on the Board (the creation of a majority-black district would not necessarily lead to the election of a black Board member, while the appointment of a black Board member unavoidably would), we think defendant and defendant-intervenors' inference is unjustified.[18]

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[18] Defendant mentions the continuing duty of the School Board to "remedy any remaining vestiges of the dual [school] system" under the order in *Lemon v. Bossier Parish School Board*, 240 F.Supp. 709 (W.D. La. 1965), citing in particular the School Board's failure to maintain a biracial committee. We fail to see how this can be in any way related to the School Board's purpose in adopting the Police Jury plan.

At bottom, defendant's argument that the School Board's adoption of the Police Jury plan rather than something like the NAACP plan runs afoul of section 5 is indistinguishable from an argument rejected by the Court in *Miller v. Johnson*. Here, defendant argues that the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts. In *Miller*, the "key to the Government's position . . . is and always has been that Georgia failed to proffer a nondiscriminatory purpose for its refusal in the first two submissions to take the steps necessary to create a third majority-minority district." — U.S. at ——, 115 S. Ct. at 2492. The Supreme Court described this position as "insupportable" and stated that Georgia's adherence to "other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan 'so discriminates on the basis of race or color as to violate the Constitution,' and thus cannot provide any basis under § 5 for the Justice Department's objection." *Id.* — U.S. at ——, 115 S. Ct. at 2492 (citations omitted). We note that, in *Miller*, the Department of Justice denied preclearance until the Georgia Assembly had drawn three of 11 (or 27%) black majority districts in a State with a population that is 27% black. The Supreme Court agreed with the district court that the Department of Justice was engaged improperly in "black-maximization" on a theory of section 5 that the Supreme Court rejected. *Id.* *Here*, defendant denied preclearance noting that the Board had adopted the Police Jury plan when it had before it a plan that provided for two of 12 (or 18%) majority-black districts in a parish with a voting-age population that is 17.6% black. The key to defendant's

position in this case, similarly, is that the School Board has not provided an adequate explanation for adopting the precleared Police Jury plan when it had before it the NAACP plan. As *Miller* makes clear, the adoption of one nonretrogressive plan rather than another nonretrogressive plan that contains more majority-black districts cannot by itself give rise to the inference of discriminatory purpose. Defendant here, as it did in *Miller*, pursues a theory the result of which is that no political subdivision presented with a plan that provides for x number of majority-black districts can ever adequately explain its reasons for adopting a plan that provides for x minus n majority-black districts. The *Miller* Court rejected this theory of section 5, and we will not resuscitate it here.

Accordingly, we grant plaintiff Bossier Parish School Board the requested declaratory judgment.

[Maps included as an appendix to the opinion, but omitted from this appendix, are reproduced at 907 F. Supp. at 451-452; the originals are U.S. Exhs. 76A and 77F.]

KESSLER, District Judge, concurring in part and dissenting in part.

I concur in the holding of section III(A) of the majority opinion, namely, that section 2 of the Voting Rights Act may not be imported into section 5. 42 U.S.C. § 1973c. The statute does not compel such a reading, and all three-judge panels which have addressed the issue have concluded that section 2 requirements are not part of section 5. *See Texas v. United States*, Civ. No. 94-1529, Slip. op. at 2, 1995 WL 456338 (D.D.C. Apr. 24, 1995); *Arizona v. Reno*, 887 F. Supp. 318, 321-22 (D.D.C. 1995); *Georgia v. Reno*, 881 F. Supp. 7, 13-14 (D.D.C. 1995); *New York v. United States*, 874 F. Supp. 394, 400 (D.D.C. 1994). Sections 2 and 5 are undoubtedly "designed to complement and reinforce each other," *Arizona*, 887 F. Supp. at 321, but because they "differ in structure, purpose and application," *Holder v. Hall*, 512 U.S. 874, ——, 114 S. Ct. 2581, 2587, 129 L.Ed.2d 687 (1994) (opinion of Kennedy, J.), the inquiries into each section are independent. Our colleagues in *Arizona*, recently considered the identical issue, and our holding today with respect to sections 2 and 5 is consistent with that opinion: The School Board may receive clearance under section 5 without demonstrating that its redistricting decision complies with section 2, and the Department may not withhold preclearance merely by establishing a section 2 violation. *See Arizona*, 887 F. Supp. at 323-24.

As to section III(B) of the majority opinion, however, I cannot in good conscience agree with the result reached by my two colleagues. The extensive record demonstrates that the Bossier Parish School

Board did not act with "legitimate, nondiscriminatory motives." *New York*, 874 F. Supp. at 400. Rather, in light of the impact the School Board's decision will have on the black community, the long history of discrimination and segregation in the Bossier Parish school system, the perpetuation of the exclusion of blacks from full participation in the electoral process, the significant timing of events that led up to the School Board's decision, and the noticeable departures from normal procedure, I am convinced that the School Board acted with "the purpose . . . [of] abridging the right to vote on account of race or color" in violation of the Voting Rights Act, 42 U.S.C. § 1973c. Accordingly, I would deny preclearance, and I respectfully dissent.

I.

Under section 5 of the Voting Rights Act, the burden of proving that the adopted plan does not have a discriminatory purpose rests squarely with the Bossier Parish School Board. *Rome v. United States*, 446 U.S. 156, 183 n. 18, 100 S. Ct. 1548, 1565 n. 18, 64 L.Ed.2d 119 (1980); *Georgia v. United States*, 411 U.S. 526, 538, 93 S. Ct. 1702, 1709, 36 L.Ed.2d 472 (1973). As stated succinctly by the majority, if the evidence is equally convincing on either side, the School Board—bearing the risk of nonpersuasion—must lose. Maj. Op. 446; *see McCain v. Lybrand*, 465 U.S. 236, 257, 104 S. Ct. 1037, 1050, 79 L.Ed.2d 271 (1984) (in the preclearance process,

"the burden of proof (the risk of nonpersuasion) is placed upon the covered jurisdiction").[1] In this case, the evidence is far from being equally convincing on either side. Not only does the evidence fail to prove absence of discriminatory purpose, it shows that racial purpose fueled the School Board's decision.

II.

The Supreme Court has told us that "[d]etermining whether invidious purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S. Ct. 555, 564, 50 L.Ed.2d 450 (1977). Such evidence, the Court stated, includes the impact the state's action has on protected minority groups; the historical background of the challenged decision; the specific sequence of events leading up to that decision; any substantive departure from the normal process; and the legislative or administrative history of the decision. *Id.* 429 U.S. at 266-268, 97 S. Ct. at 564-565. *See also Busbee v. Smith*, 549 F. Supp. 494, 516-517 (1982), *aff'd*, 459 U.S. 1166, 103 S. Ct. 809, 74 L.Ed.2d 1010 (1983). Applying this legal standard to the record

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[1] While it may be true that this burden-shifting scheme is "anomalous under our law," Maj. Op. at 445-446, that should have no influence on our decision. Congress decides how to write the country's statutes, and Congress clearly believed that the states' open defiance of the Equal Protection Clause—what the Supreme Court called an "insidious and pervasive evil,"—*South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S. Ct. 803, 808, 15 L.Ed.2d 769 (1966), was serious enough to warrant the "federalism costs," Maj. Op. at 444, of the Voting Rights Act.

before us, I find that the evidence demonstrates conclusively that the Bossier School Board acted with discriminatory purpose.[2]

A.

In *Arlington Heights*, the Court said that when analyzing the government's purpose, "an important starting point . . . [is the] impact of an official action—whether it 'bears more heavily on one race than another.'" *Arlington Heights*, 429 U.S. at 266, 97 S. Ct. at 563 (quoting *Washington v. Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 2049, 48 L.Ed.2d 597 (1976)). The Board's adoption of a redistricting plan with no majority-black districts undoubtedly "bears more heavily" on the black community in Bossier Parish than on the white community, because it effectively prevents black voters from electing candidates of their choice to the School Board.

In Bossier Parish, voting is racially polarized, Stips. ¶¶ 181-196. No black person has ever been elected to the Bossier Parish School Board, Stip ¶ 153, despite the fact that 20.1% of the population of Bossier Parish is black, Stip. ¶ 5, and almost 30% of its public schools are black. Stips. ¶¶ 5, 134. Given this context, black voters may well require a majority-black district in order to have a fair chance

[2] It is teliing that the majority never once refers to *Arlington Heights* when they evaluate the evidence submitted by the Department and Intervenors. *See* Maj. Op. at 447-449. Indeed, the majority articulates no standard by which it decides whether "the School Board's evidence is more persuasive than the evidence proffered against it." Maj. Op. at 446.

of electing candidates of their choice. Further, "[b]ecause it is sensible to expect that at least some blacks would have been elected [to the Board], the fact that none have ever been elected is important evidence of purposeful exclusion." *Rogers v. Lodge*, 458 U.S. 613, 623-24, 102 S. Ct. 3272, 3279, 73 L.Ed.2d 1012 (1982). As one federal court of appeals noted, "nothing is as emphatic as zero." *United States v. Hinds County School Board*, 417 F.2d 852, 858 (5th Cir. 1969). The fact is, the Board's plan presents the black minority of Bossier Parish with no realistic opportunity to elect any candidates of its choice to any of the board seats.

Moreover, as Defendant-Intervenors demonstrated, it was clearly possible to draw a redistricting plan for the Bossier Parish Schools with one or two majority-black districts, and still respect traditional districting principles.[3] The School Board admits that it is "obvious that a reasonably compact black-majority district could be drawn in Bossier City." Stip. ¶ 36. But rather than consider either of the alternative proposals brought before it or direct their own cartographer to draft one, the School Board adopted a plan "which guaranteed that blacks would remain underrepresented on the [School Board] by comparison to their numerical strength in the enlarged community." *City of Port Arthur v. United States*, 517 F. Supp. 987, 1022 (D.D.C. 1981), *aff'd*, 459

[3] In addition to the plan presented to the School Board on September 3, 1992, Defendant-Intervenors have presented two other plans that show it is possible to draw majority-black districts in Bossier Parish which are fully consistent with traditional districting principles.

U.S. 159, 103 S. Ct. 530, 74 L.Ed.2d 334 (1982). This conscious decision to adopt a plan that effectively excludes minority voters from the political process is probative of discriminatory intent.

B.

The Supreme Court has held specifically that "the historical background of the challenged decision" is properly part of the purpose inquiry under the Voting Rights Act. *Arlington Heights*, 429 U.S. at 267, 97 S. Ct. at 564. Here, the history of discrimination and racism in and out of the school system demonstrates that the School Board's vote was yet another chapter in its long-standing refusal to address the concerns of the black community of Bossier Parish. Evidence of historical discrimination "is relevant to drawing an inference of purposeful discrimination, particularly in cases such as this one where the evidence shows that discriminatory practices were commonly utilized . . . and that they were replaced by laws and practices which, though neutral on their face, serve to maintain the status quo." *Rogers*, 458 U.S. at 625, 102 S. Ct. at 3279.[4]

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[4] The majority excludes evidence of historical discrimination in the Bossier Public Schools and Bossier Parish because it believes that such "evidence [is] relevant only to the section 2 inquiry." Maj. Op. at 440, n.5. In my view, the majority wrongly believes that once we decide that sections 2 and 5 are analytically distinct, we may not use evidence of historical discrimination (which is central to a section 2 inquiry) to decide the "purpose" prong of section 5. But as the panel recently explained in *Arizona v. Reno*, 887 F. Supp. at 323, nothing in the statute or case law leads to that conclusion. "Although the inquiry required under the purpose prong of section 5 extends into areas that would also be relevant in a section 2 proceeding," that does not mean that considering evidence of historical discrimination is "tantamount to launching a section 2 proceeding . . . under the guise of section 5." *Id.* at 323. More importantly, excluding evidence of historical discrimination contravenes the Supreme Court's explicit direction in *Arlington Heights*, where the Court stated that among the factors to consider in the "purpose" inquiry is the "historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes." 429 U.S. at 268, 97 S. Ct. at 564. In short, the majority ignores the standard the Supreme Court established to govern precisely the type of inquiry we must make in this case.

It is undisputed that Louisiana and the Bossier school system have a history of segregation and racial discrimination predating the Civil War. Following the passage of the Thirteenth Amendment, Louisiana began what the Supreme Court has called "unremitting and ingenious" defiance of the Constitution, *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S. Ct. 803, 808, 15 L.Ed.2d 769 (1966), by passing laws designed to disenfranchise black voters. Stip. ¶ 216. One law prohibited elected officials from helping illiterates. Another statute required all voters to use complex application forms, prohibited explanation of application questions, and facilitated wholesale purges by party officials of voters who managed to register successfully. *Id.* The new laws reduced black registration by 90 percent in the state, leaving only 10 percent of adult black males eligible to vote. Stip. ¶ 216. Two years later, in 1889, Louisiana's Constitutional Convention imposed a "grandfather" clause and educational and property qualifications for voter registration. Both provisions were designed to limit black political participation,

Stip. ¶ 217, and both succeeded: black males constituted just 4 percent of the state's population. *See United States v. State of Louisiana*, 225 F. Supp. 353, 373 (E.D. La. 1963).

In 1921, pursuant to state law, the state Democratic party established an all-white primary. Stips. ¶¶ 220, 222. That same year, the Legislature replaced the grandfather clause with a requirement that an applicant "give a reasonable interpretation" of any section of the federal or state constitution in order to vote. Stip. ¶ 221. After the all-white primary was struck down by a federal court, the Democratic party adopted an anti-single-shot law, and a majority vote requirement for party officers. *Major v. Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983). The "reasonable interpretation" requirement was finally held unconstitutional by the United States Supreme Court in 1965. *Louisiana v. United States*, 380 U.S. 145, 85 S. Ct. 817, 13 L.Ed.2d 709 (1965).

In the Bossier school system it was much of the same. Despite the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873 (1954), *de jure* segregation was the rule in Louisiana public schools, and federal courts were forced to order school districts to comply with federal law. Stip. ¶ 235. Since 1965, the Bossier Parish School Board has been the defendant in *Lemon v. Bossier Parish School Board*, Civ. Act. No. 10,687 (W.D. La., filed Dec. 2, 1964) in which it was found liable for intentionally segregating the public schools in violation of the Fourteenth Amendment. *Lemon v. Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La.

1965), *aff'd*, 370 F.2d 847 (5th Cir. 1967), *cert. denied*, 388 U.S. 911, 87 S. Ct. 2116, 18 L.Ed.2d 1350 (1967).

Throughout the late 1960's and early 1970's, the school board sought to limit or evade its desegregation obligations. At one point, the School Board sought to assign black children of Barksdale Air Force Base personnel to black schools without a right to transfer to white schools, claiming that they were "federal children" and not within the "jurisdiction" of the school district. Stip. ¶ 237. Circuit Judge Wisdom rejected the School Board's "new and bizarre excuse" for rationalizing its denial of the constitutional right of black school children to equal educational opportunities. *Bossier Parish School Board v. Lemon*, 370 F.2d 847, 849 (5th Cir. 1967).

In 1969, the Fifth Circuit rejected the school board's "freedom of choice" plan in *Hall v. St. Helena Parish Sch. Bd.*, 417 F.2d 801 (5th Cir. 1969), and in 1970, after "protracted litigation," rejected another inadequate remedial plan proposed by the district in *Lemon v. Bossier Parish Sch. Bd.*, 421 F.2d 121 (5th Cir. 1969).

In 1971, the court held unconstitutional the School Board's plan to assign students to one of two schools in Plain Dealing based on their test scores. *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400 (5th Cir. 1971). In 1979, the School Board filed a motion seeking a declaration of unitary status and a release from further court supervision. The motion was denied, and the school district has yet to be declared a unitary system. Stip. ¶ 239. Since 1980, despite the School Board's continuing duty to desegregate, the number

of elementary schools with predominately black enrollments has increased from one to four. To this day, the School Board remains under direct federal court order to remedy any remaining vestiges of segregation in its schools.

The Board has also failed to honor the *Lemon* court's order to maintain a Biracial Committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Stip. ¶ 111. The committee met only 2 or 3 times, and only the black members attended. For decades following the court's order, the Board ignored this requirement altogether. Stip. ¶ 112. In 1993, the Board finally established a similar committee, but disbanded it after three months because, according to School Board Member Barry Musgrove, "the tone of the committee made up of the minority members of the committee quickly turned toward becoming involved in policy." Stip. ¶ 116. What exactly the Committee was supposed to become involved in, if not policy, is unclear. What is clear is that the Board's unilateral dismantling of the Committee was in direct violation of a federal court order to address the concerns of the black community.

The School Board's adoption of the Police Jury plan must be evaluated in the framework of this long history of official discrimination. It may seem unduly harsh to consider racism and discrimination dating back to the Civil War, but this history reveals an insidious pattern which cannot be ignored, and must inform our decision today. Like the school boards and legislatures before it, the Bossier Parish School Board's actions effectively eliminate the black community from the political process. So long as black voters have no electoral power, they have no voice, and the School Board can safely ignore their concerns.

C.

The Supreme Court has told us that "the specific sequence of events leading up to the challenged decision may shed some light on the decisionmaker's purpose." *Arlington Heights*, 429 U.S. at 267, 97 S. Ct. at 564. Here, the sequence of events leading up to the adoption of the Police Jury plan supplies further proof of discriminatory purpose.

The redistricting process began in May, 1991, when the Board decided to develop its own plan rather than adopt the one accepted by the Police Jury. Given the fact that the next School Board election was not scheduled until October, 1994, there was no need for hasty Board action. The Board hired Gary Joiner, a cartographer, who had drawn the Police Jury plan. He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Police Jury plan. Stip. ¶ 86. On July 29, 1991, the Police Jury plan was precleared by the Justice Department. On September 5, 1991, however, the School Board decided not to adopt the Police Jury plan, largely because it would pit incumbents against each other. Over the course of the next year, School Board members considered a number of redistricting options. Mr. Joiner met privately with School Board members and demonstrated different possibilities to them on his computer. Stip. ¶ 96. These meetings

were not open to the public nor were there any recorded minutes or published notice of the meetings.

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. In March of 1992, George Price, on behalf of a coalition of black community groups, wrote the School Board asking to participate in its redistricting process. Stip. ¶ 93. Neither the Board nor the Superintendent responded to this request. *Id.* In August of 1992, Mr. Price sent another letter asking specifically to be involved in every aspect of the redistricting process. Again, no response. Stip. ¶ 94.

Frustrated by the School Board's unresponsiveness, Price contacted the NAACP Redistricting Project in Baltimore. The Project developed a partial plan for Price to present to the School Board that consisted of two majority-black districts. Stip. ¶ 98. The plan did not show the other ten districts that made up the Parish. When Price showed this plan to a school district official, he was told that the plan was unacceptable because it only showed two districts. Price went back to the NAACP and a new plan was drawn up.

Then, on September 3, 1992, when Price appeared on behalf of the black community at a public hearing and presented a new plan showing all twelve districts, including two majority-black districts, the Board dismissed it summarily, claiming—incorrectly—that

they could not consider any plan that split precinct lines.[5] Stip. ¶ 102.

At its next meeting, on September 17, 1992, without any further consultation with its cartographer or attempt to address the concerns of the black community, the School Board passed a motion of intent to adopt the Police Jury plan, which had no majority-black districts. At that meeting, Mr. Price again presented the NAACP proposal. Stip. ¶ 106. Instead of discussing the plan with Mr. Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the School Board's purported reason for rejecting the plan), the Board simply passed the motion of intent to adopt the Policy Jury plan at the next School Board meeting. *Id.*

One week later, on September 24, 1992, an overflow crowd attended a public hearing on the redistricting plan. Fifteen people spoke against the School Board's proposed plan, most of whom objected because it would dilute minority voting strength. Not a single person spoke in favor of the plan. Stip. ¶ 108. At this hearing, Mr. Price presented the Board with a petition signed by more than 500 Bossier Parish citizens, asking the Board to consider an alternative redistricting plan. *Id.*

Despite the one-sided input from Bossier citizens, and despite the fact that the Board was under no time pressure to decide the issue, the Board voted one week later to adopt the Police Jury plan. As with the

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[5] See discussion at pages 443-444, *infra*.

meetings of September 3 and September 17, the Board's minutes of the October 1, 1995 meeting reflect little substantive consideration of the Police Jury plan, other than to approve the Police Jury plan as quickly as possible.[6] Board Member Myrick testified that the Board adopted the plan that evening because it was "expedient."

The Police Jury plan only became "expedient" when the School Board was publicly confronted with alternative plans demonstrating that majority-black districts could be drawn, and demonstrating that political pressure from the black community was mounting to achieve such a result. The common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest. This sequence of events of "public silence and private decisions,"[7] culminating in the Board's hasty decision, is evidence of the Board's discriminatory purpose.

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[6] For example, the Board seems to have abandoned its concerns about the Police Jury plan pitting incumbents against each other.

[7] Def.-Int. Bf. at 20.

D.

The fact that the Board adopted a plan which departs substantively from its earlier districting plans and which ignores factors it has usually considered of paramount concern, is probative of discriminatory purpose, "particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached." *Arlington Heights*, 429 U.S. at 267, 97 S. Ct. at 564. The most glaring example is that the adopted plan forced incumbents to run against each other. Incumbency protection has always, understandably, been a high priority for both the Police Jury and School Board. That was the reason there were different redistricting plans in effect for each entity during the 1980s. That was also the reason the Police Jury refused to conduct a joint redistricting effort with the school board after 1990.

Moreover, the plan adopted by the Board contravenes other traditional districting principles. For example, it creates one district containing almost half of the geographic area in the Parish. Stip. ¶ 140. Several of its districts are not compact, according to the Board's own consultant. Stip. ¶ 139. In addition, the plan creates election districts without any schools in them and ignores school attendance boundaries. Stip. ¶ 141. Finally, the plan does not respect communities of interest in Bossier Parish. Stips. ¶¶ 135-137.

Perhaps if the Board had ignored one or two of these standard redistricting criteria, it would not be noteworthy, but when the Board's plan plainly violates a whole number of redistricting principles, we have further evidence from which to infer that the Board's decision was fueled by discriminatory purpose.

E.

In setting forth the evidentiary categories to be evaluated in determining whether invidious purpose was a motivating factor, the Supreme Court in *Arlington Heights* noted that its listing of such categories was not exhaustive. 429 U.S. at 268, 97 S. Ct. at 565. Thereafter, in *Rogers v. Lodge*, 458 U.S. 613, 102 S. Ct. 3272, 73 L.Ed.2d 1012 (1982), the Court considered additional political and sociological factors that underscored the state's discriminatory purpose. In *Rogers*, the Court struck down Burke County, Georgia's at-large election system, holding that it violated the Fourteenth and Fifteenth Amendments because the state had acted with discriminatory purpose. The Court considered important the fact that "lingering effects of past discrimination," caused socioeconomic disparity between whites and blacks. *Id.* 458 U.S. at 626, 102 S. Ct. at 3280 (citations omitted). The Court also said that it was important to consider the educational disparity between whites and blacks. *Id.* 458 U.S. at 624, 102 S. Ct. at 3279. Here, it is undisputed that black citizens in Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts, and that the difference is

traceable to the legacy of racial discrimination in the Parish. Stip. ¶ 200.

According to the 1990 Census,[8] the poverty rate for blacks (44.7%) is nearly five times the rate for whites (9.1%). The per capita income of blacks ($5,260) is only 40% of that enjoyed by whites ($12,966). The unemployment rate for blacks age 16 and over (22.4%) is nearly four times that for whites. The percentage of blacks over 25 without a high school degree (40.6%) is over twice the rate of whites (16.7%). Only 4.8% of whites age 25 and older have less than a ninth grade education, while 22.8% of blacks in the same age category have less than a ninth grade education. Almost 84% of whites 25 years or older were at least high school graduates, compared to only 58.7% of blacks. Also, 17% of whites 25 years or older had at least four years of college, compared to only 8.1% of blacks. In 1990, only 2.9% of the white labor force were unemployed, while 9.1% of the black labor force was unemployed. Finally, whites are five times as likely to own a car as blacks, a significant fact in a rural parish where voting places may be distant from people's homes.

It is also undisputed that the depressed socioeconomic and educational levels of blacks within Bossier Parish make it hard for them to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for blacks within Bossier Parish. Stip. ¶ 213. Like the state representative in Burke County in *Rogers*,

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[8] Stips. ¶¶ 204, 208, 211.

the School Board members in Bossier Parish "have retained a system which has minimized the ability of [Bossier Parish] Blacks to participate in the political system." 458 U.S. at 626, 102 S. Ct. at 3280 (citations omitted).

Thus, the additional factors identified by the Supreme Court in *Rogers*, are met foursquare in this case. As the Court explained in *Rogers*, "[n]ecessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." 458 U.S. at 618, 102 S. Ct. at 3276 (quoting *Washington v. Davis*, 426 U.S. at 242, 96 S. Ct. at 2049).

F.

We also have before us statements made by three School Board members about minority representation on the Board. School Board member Henry Burns said that while he "personally favors having black representation on the board, other school board members oppose the idea." U.S. Exh. 106 ¶ 17. School Board member Barry Musgrove said that "while he sympathized with the concerns of the black community, there was nothing more he could do . . . on this issue because the Board was 'hostile' toward the idea of a black majority district." *Id.* And School Board member Thomas Myrick told George Price of the NAACP that "he had worked too hard to get [his] seat and that he would not stand by and 'let us take his seat away from him.'" U.S. Exh. 106 ¶ 29, D-I Exh. E ¶ 19.

These statements standing alone would certainly be insufficient to show discriminatory purpose. However, considered in the context of the School Board's discriminatory past, the efforts to preserve segregation and exclude black representation from the Board, the sequence of events leading up to the Board's decision, and the anomalous nature of the plan itself, the statements add further proof of improper motive. While the majority is correct that the statements are subject to different interpretations, Maj. Op. at 447-448, given all the evidence previously set forth showing discriminatory purpose, and the efforts of the past fifty years to desegregate the schools, it seems fair to conclude that at least some School Board Members were openly "hostile" to black representation on the school board.[9]

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[9] The majority argues that the appointment of Jerome Blunt to fill a vacant seat on the Board "proved [the Members'] lack of hostility to this sort of black representation." Maj. Op. at 447. However, Mr. Blunt was appointed to represent a district that was only 11% black, and his short tenure on the job was a stark reminder of the highly polarized voting in Bossier Parish, *see* section II(A), *supra*. Mr. Blunt's chances of reelection were slight, and his short-lived appointment was a far-cry from the full tenure of an elected black school committee member. The majority notes, however, that the "timing and context" of Blunt's appointment indicate that the Board acted for legitimate reasons. Maj. Op. at 447. The facts suggest the opposite. Blunt was appointed on September 17, 1992—squarely in the middle of the controversy surrounding the redistricting plan—at the very meeting where the Board adopted a motion of intent to adopt the Police Jury plan and after George Price had made his demands for a majority-black district. Certainly, Board members knew that adopting the Police Jury plan would ignite controversy in the black community. And on the very night of that decision, the School

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For all the foregoing reasons, the only conclusion that can be drawn from the evidence is that the Bossier School Board acted with discriminatory purpose. The adopted plan has a substantial negative impact on the black citizens of Bossier Parish. The sequence of events leading up to the decision show conclusively how the School Board excluded the black community from the redistricting process and rushed to adopt the Police Jury plan only when faced with an alternative plan that provided for black representation. The plan itself ignores and overrides a number of the School Board's normally paramount interests. And the statements of some School Board members certainly lend strength to the other evidence. "Justice is blind; but courts nevertheless do see what there is clearly to be seen."[10] We cannot blind ourselves to the reality of the situation and the record before us. The Bossier School Board acted with discriminatory purpose in adopting the Police Jury Plan.[11]

Board appointed a black to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan.

[10] *Laker Airways Limited v. Pan American World Airways*, 568 F. Supp. 811, 816 (D.D.C. 1983). While Judge Harold Greene made this observation in a very different context (an antitrust case), its pithiness and wisdom apply beyond that context.

[11] Because of the paucity of public discussion about the Board's decision (except for those who opposed it), and because the Board left virtually no legislative history, we cannot assess the "minutes of its meetings, or reports." *Arlington Heights*, 429 U.S. at 268, 97 S. Ct. at 565. Given the considerable evidence showing discriminatory purpose, however, the Board's failure to document its decisionmaking process is certainly suspect.

III.

In the face of this considerable evidence, the School Board has offered several reasons for its adoption of the Police Jury plan. Even the majority admits that a number of these reasons "clearly were not the real reasons," Maj. Op. at 446, n. 14, *i.e.*, the School Board lied.

For example, at one point, the School Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816, 125 L.Ed.2d 511 (1993) (decided June 28, 1993), which was decided nine months *after* the Board adopted its plan. Although the Board does not lie as fragrantly in its remaining rationales, they are equally unconvincing.

The School Board claims that it could not adopt any plan with majority-black districts because such a plan would require precinct-splitting, which violates state law and would be prohibitively expensive. The evidence shows conclusively, however, that throughout the redistricting process, the School Board was willing to split precincts to do just that, *i.e.*, to split precincts so long as it was for the protection of incumbents. It was only *after* the black community presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale.

The majority agrees that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." Maj. Op. at 447. The School Board hired Mr. Joiner at the beginning of the process to develop the plan, fully intending that he would split precincts (that is why he needed between 200-250 hours to complete the job). At the September 5, 1991 School Board meeting, the first School Board meeting after the Police Jury plan had been precleared by the Department, Mr. Joiner presented proposed maps that showed split precincts. Further, it is now undisputed by the School Board that splitting precincts does not violate state law. While the School Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, Stips. ¶¶ 13-23, and many do so when requested by a school board. The Bossier Parish Police Jury itself created 13 new precincts in 1991, Stip. ¶ 60, and the School Board has stipulated that the Police Jury was currently considering consolidating some of its precincts for other reasons. Stip. ¶ 61.

Once again, it was only after being presented with the black community's plan, and the possibility of a majority-black district in the ensuing election, that the Board totally reversed itself and "arrived quickly," Maj. Op. at 447, at the conclusion that it was *against* splitting districts. Nor did the School Board voice its concern about *too many* precinct splits causing higher election costs in its initial submission to the Department. U.S. Exh. 102 at 9 (testimony of Blunt). Moreover, the Board never estimated the cost of splitting precincts before it voted to adopt the Police Jury plan. *Id.* Obviously, "cost" did not

actually motivate the School Board's decision at the time it was made. The focus of our inquiry is what motivated the Board *at the time of its decision*, not whether post-decision rationales would have been legitimate reasons. The Board's excuses on the significant subject of precinct-splitting are clearly not justified.

The final reason offered by the School Board is that the Police Jury plan guaranteed preclearance, that is, the Department would approve the School Board's plan because it was identical to the Police Jury plan which was precleared on July 29, 1991. It is clear, however, that "guaranteed preclearance" was not the School Board's motive as it began the redistricting process, because if so, it would not have waited until October 1, 1992—almost 14 months later—to adopt the Police Jury plan. If guaranteed preclearance was what the Board wanted, it would have acted soon after the Police Jury plan was precleared by the Justice Department on July 29, 1991. As with the precinct-splitting issue, this rationale also surfaced only after the School Board was faced with alternative plans that could conceivably lead to majority-black districts and an elected black member.[12] The evidence shows

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[12] It is hard to accept the majority's unduly charitable characterization of this decision as nothing more than "an understandable, if not necessarily laudable, retreat from a highly charged public debate," Maj. Op. at 449, when the evidence shows overwhelmingly that the black community was excluded from that public debate. School Board members did more than simply retreat from a political debate; in the guise of "expediency," Dep. of Myrick, they excluded black citizens from the only process that would allow that community to elect a candidate of its choice.

that School Board members adopted the Police Jury plan not because it "guaranteed preclearance," but because given growing dissatisfaction in the black community, it was the only way to ensure that there would be no black majority districts.

The Board's rationales simply do not withstand a common-sense reading of the record. Some of the rationales are untrue on their face, and others do not bear even minimum scrutiny. Most of the alleged justifications are absent from the public record, so the School Board asks us to accept their post-hoc rationalizations rather than focus on their motive at the time of the decision. "[I]nvidious purpose may often be inferred from the totality of the relevant facts." *Washington v. Davis*, 426 U.S. 229, 242, 96 S. Ct. 2040, 2048.

The evidence is clear that racial purpose was "a motivating factor in the [Board's] decision" to adopt the Police Jury plan. *Arlington Heights*, 429 U.S. at 265-266, 97 S. Ct. at 563 (emphasis added). The burden of proof is on the School Board to show absence of discriminatory purpose, *Rome v. United States*, 446 U.S. 156, 183 n. 18, 100 S. Ct. 1548, 1565 n. 18, 64 L.Ed.2d 119 (1980), and it has woefully failed to satisfy that burden. Its rationales are so flagrantly pretextual as to further corroborate the conclusion that the School Board acted with discriminatory purpose.

IV.

The School Board claims that the Supreme Court's recent decision in *Miller v. Johnson*, — U.S. ——, 115 S. Ct. 2475, 132 L.Ed.2d 762 (1995), precludes it

from adopting any majority-black districts because such districts would constitute "racial gerrymandering" in violation of the Equal Protection Clause. The School Board's reading of *Miller* is erroneous for a number of reasons.

First, this is simply not a *Miller* case. We do not have *any* plan with majority-black districts to evaluate, no less a plan where, as in *Miller*, "race was the overriding and predominant force in the districting determination." *Id.* — U.S. at ——, 115 S. Ct. at 2485. Since the School Board chose to adopt the Police Jury plan, it would be sheer speculation on the basis of this record to determine whether "race was the predominant factor motivating," *id.* — U.S. at ——, 115 S. Ct. at 2485, some other hypothetical redistricting plan. Defendant and Defendant-Intervenors are not even arguing that any particular plan should have been adopted by the School Board. How, in the absence of any concrete plan, can a court decide whether a plaintiff has proven that the government "subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, [and] respect for political subdivisions or communities"? *Id.* — U.S. at ——, 115 S. Ct. at 2488. The court would be speculating, and the prohibition against advisory opinions prohibits us from answering such hypothetical legal questions. *See Flast v. Cohen*, 392 U.S. 83, 96-97, 88 S. Ct. 1942, 1950-51, 20 L.Ed.2d 947 (1968) (such suits lack the "clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests").

The Court was extraordinarily sensitive in *Miller* "to the complex interplay of forces that enter a legislature's redistricting calculus." *Miller*, — U.S. at ——, 115 S. Ct. at 2488. It recognized that legislatures engaged in this difficult process "will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Id.* (citations omitted). The Court also understood the delicate line-drawing that fact-finders would have to engage in:

> "The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision . . .".

Id.

It would be impossible, without an actual plan, without "circumstantial evidence of a district's shape and demographics," without a showing that "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations,"

for a court to make the informed and sophisticated judgment called for by the Supreme Court in *Miller*. If and when the School Board does adopt a plan with one or more majority-black districts, the court may then determine whether that plan violates *Miller*.

Second, the Court made clear in *Miller* by its repeated citations to and discussion of *Arlington Heights*, that it was not altering the legal standard by which we assess violations of Section 5. *See, e.g., Miller*, — U.S. at ——, 115 S. Ct. at 2487 (quoting *Arlington Heights* for proposition that in purpose inquiry, courts must look at impact and "other evidence of race-based decisionmaking"). *See also id.* — U.S. at ——, 115 S. Ct. at 2483. Plaintiffs must still prove the absence of discriminatory purpose, applying the standards set forth in *Arlington Heights* and related cases in the voting rights area, such as *Mobile v. Bolden*, 446 U.S. 55, 100 S. Ct. 1490, 64 L.Ed.2d 47 (1980) and *Rogers v. Lodge*, 458 U.S. 613, 102 S. Ct. 3272. As the evidence shows, the School Board has made no such showing. The School Board would, through its reading of *Miller*, essentially undercut the vitality of *Arlington Heights* in a Section 5 case. That was not the intent of the Supreme Court.

Third, assuming *arguendo*, the existence of some hypothetical plan which contains one or more majority-black districts (we do not know which since we do not have a plan before us), the record makes clear that it is possible to draw at least one such district in Bossier Parish, consistent with *Miller* and *Shaw v. Reno*, 509 U.S. 630, 113 S. Ct. 2816, 125 L.Ed.2d 511 (1993). By affirming the race-conscious California redistricting plan in *DeWitt v. Wilson*, 856

F. Supp. 1409 (E.D. Cal. 1994) (decided the same day as *Miller*), *aff'd*, — U.S. ——, 115 S. Ct. 2637, 132 L.Ed.2d 876 (1995), the Supreme Court made clear that considering race in redistricting, by itself, does not automatically trigger strict scrutiny. In *DeWitt*, the district court found that the California plan "evidences a judicious and proper balancing of the many factors appropriate to redistricting, one of which was the consideration of the application of the Voting Rights Act's objective of assuring that minority voters are not denied the chance to effectively influence the political process." 856 F. Supp. at 1413-14.

As noted earlier, *Miller* recognizes that "traditional race-neutral districting principles [such as] compactness, contiguity, and 'respect for political subdivisions' . . . can defeat a claim that a district has been gerrymandered on racial lines." *Miller*, — U.S. at ——, 115 S. Ct. at 2488 (citations omitted). As discussed in detail above, *see* Section II(D), *supra*, the alternative plans presented to the School Board and this court do rely upon "traditional districting principles." The districts in the illustrative plans are contiguous, reasonably compact, and respect communities with actual shared interests. *See* Testimony of Price; Testimony of Hawkins; Stips. ¶¶ 181-95. Moreover, at least one of the alternative plans would unite a predominantly black residential area, which is split under the Board's plan. "[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Shaw v. Reno*, 509 U.S. at ——, 113 S. Ct.

at 2826 (1993). Thus, assuming these districts existed—and they do not—the School Board could not meet its burden under *Miller* to show that race rather than traditional districting principles was the predominant force.

For all of these reasons, the School Board's reliance on *Miller v. Johnson* is unpersuasive.

V.

The evidence in this case demonstrates overwhelmingly that the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose. The adoption of the Police Jury plan bears heavily on the black community because it denies its members a reasonable opportunity to elect a candidate of their choice. The history of discrimination by the Bossier School System and the Parish itself demonstrates the Board's continued refusal to address the concerns of the black community in Bossier Parish. The sequence of events leading up to the adoption of the plan illustrate the Board's discriminatory purpose. The School Board's substantive departures from traditional districting principles is similarly probative of discriminatory motive. Three School Board members have acknowledged that the Board is hostile to black representation. Moreover, some of the purported rationales for the School Board's decision are flat-out untrue, and others are so glaringly inconsistent with the facts of the case that they are obviously pretexts.

* * * * * *

Sometimes we need to step back and look at first principles. Congress passed the Voting Rights Act to combat the "unremitting and ingenious defiance of the Constitution" by several states, *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S. Ct. 803, 808, Louisiana among them. The Bossier School Board continues to resist the Constitution, through its ingenious, if subtle, discrimination against the black citizens of Bossier Parish. We are long past the point where discrimination can be easily proven by use of racial epithets, racial categories or openly exclusionary voting requirements. "The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." *Allen v. State Board of Elections*, 393 U.S. 544, 565, 89 S. Ct. 817, 831, 22 L.Ed.2d 1 (1968). In this case, the School Board's decision to adopt the Police Jury plan was a thinly-veiled effort to deny black voters a meaningful opportunity for representation on the School Board.

The burden is on the School Board to show lack of discriminatory purpose. Because the School Board's proffered reasons are pretextual, it has not met its burden under section 5 of the Voting Rights Act, and its request for pre-clearance must be denied.

APPENDIX D

[CAPTION OMIITTED]

FINAL STIPULATIONS OF FACT AND LAW

The parties in the above-captioned case respectfully submit the following stipulations of fact and law.

STIPULATIONS OF FACT

Background, Method of Election, and Demographics

1. Bossier Parish is located in northwest Louisiana, bordered at the north by the State of Arkansas. The parish seat is Benton, but the major city is Bossier City. Benton is in the northern part of the parish, and Bossier City is in the south-central portion.

2. The Bossier Parish School District, which is coterminous with Bossier Parish, is the only school district in Bossier Parish.

3. Bossier Parish is governed by a police jury, which consists of twelve police jurors elected in nonpartisan elections from single-member districts to four-year, concurrent terms with a majority vote requirement.

4. The Bossier Parish School District is governed by a school board, which consists of twelve members elected in nonpartisan elections from single-member districts to four-year, concurrent terms with a majority vote requirement. No black person ever has been elected to the Bossier Parish School Board.

5. According to the 1990 Census, Bossier Parish had a total population of 86,088 of whom 65,812 (76.45

percent) were non-Hispanic white persons and 17,301 (20.1 percent) were non-Hispanic black persons.

6. According to the 1980 Census, Bossier Parish had a total voting age population of 60,904 of whom 48,130 (79.03 percent) were non-Hispanic white persons and 10,726 (17.61 percent) were non-Hispanic black persons.

7. According to the 1980 Census, Bossier Parish has a total population of 80,721 of whom 63,127 (78.2 percent) were non-Hispanic white persons and 15,024 (18.61 percent) were non-Hispanic black persons.

8. According to the 1980 Census, Bossier Parish had a total voting age population of 54,545 of whom 43,620 (79.97 percent) were non-Hispanic white persons and 9,315 (17.08 percent) were non-Hispanic black.

9. There are four municipalities located in Bossier Parish: Benton (the parish seat), Bossier City, Haughton and Plain Dealing (one very small portion of the City of Shreveport is also located in Bossier Parish).

10. According to the 1990 Census, Bossier City had a total population of 52,721 persons, of whom 9,463 (17,95%) were non-Hispanic black persons. Bossier City had a total voting age population of 37,455 of whom 5,659 (15.11%) were non-Hispanic black persons. Thus, more than 50 percent of the black population of Bossier Parish is concentrated within the City of Bossier. The remainder is concentrated in the areas of Benton (2,047 residents, of whom 41.3 percent are non-Hispanic black persons); Plain Dealing (1,074 residents, of whom 33.0 percent are non-Hispanic black persons); (Haughton (1,664 residents, of whom

464, or 27.9 percent are non-Hispanic black persons); and the unincorporated community of Princeton (635 persons, of whom 500, or 78.5% are non-Hispanic black persons).

Section 5 Preclearance Review

11. On May 28, 1991, the Bossier Parish Police Jury submitted its 1991 redistricting plan to the Department of Justice for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The plan featured twelve single-member districts, all twelve of which had a majority of white persons. During the 1990-1991 Police Jury redistricting process leading up to the preclearance submission, no alternative plan featuring black-majority districts had been presented. An April 30, 1991 letter detailing complaints regarding the redistricting process from the Concerned Citizens of Bossier Parish, a local black organization, was not included in the preclearance submission. In a letter dated July 29, 1991, the Department of Justice precleared the Police Jury plan.

12. On January 4, 1993, the Bossier Parish School Board submitted its redistricting plan to the Justice Department for preclearance review. The plan submitted was identical to the Police Jury Plan precleared in 1991. During the 1991-1992 redistricting process leading up to that submission, an alternative plan was presented which demonstrated that two black-majority districts could in fact be drawn within Bossier Parish. During that same period of time, police jury elections occurred under the new police jury redistricting plan which shed light on voting patterns within Bossier Parish. In a letter dated August 30, 1993, the Justice Department objected to the School Board plan.

Redistricting in Bossier Parish, Louisiana

13. Louisiana state law provides that the parish governing body has the authority to draw, cut, or consolidate election precincts. In Bossier Parish, that body is the Police Jury. State law also provides that precincts must be wholly contained within a police jury or other election district.

14. Pursuant to the relevant state laws in effect at the time, the parish police jury was to draw its redistricting plan (where necessary due to population shifts and the one-person, one-vote requirement) in 1991, making what precinct adjustments were necessary to accomplish that redistricting. Once police jury districts and election precincts were drawn by the police jury, the parish school board would be able to conduct its own redistricting (if necessary).

15. State law further provided that police juries could not subdivide precincts during 1991, except for subdivisions occasioned by redistricting, which could be adopted during a 45-day "window" between April 1, 1991 and May 15, 1991. Louisiana R.S. 18:532.1 H(1).

16. Louisiana Revised Statutes 18:532.1 H(2) allows a parish to divide a precinct into two or more precincts by visible features which are census tabulation boundaries during April 1, 1991 through May 15, 1991.

17. Louisiana Revised Statues 18:532.1 H(2)(d) provides that if the Department of Justice should object to a parish reapportionment plan, then that parish may divide a precinct into two or more precincts by visible features which are census tabulation boundaries "in order to satisfy said objections of the Department of Justice."

18. There are no requirements for minimum populations in a precinct, either by total population, voting age population, or registered voters.

19. State law further provided that after redistricting in 1991, parishes could not consolidate precincts until January 1, 1993. Louisiana R.S. 18:532.1 H(2).

20. Pursuant to the same statutory scheme, school boards in Louisiana normally would redistrict after the police jury. Where, as in Bossier Parish, school boards had the same number of seats as the police jury in a particular parish, that school board could not change, split or consolidate the precincts established by the police jury, but instead had to use those precincts as units for redistricting.

21. Louisiana Revised Statutes, Title 17, Section 71.3E(1) and (2) reads as follows:

> "E.(1) The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1.
>
> (2)(a) Notwithstanding the provisions of R.S. 17:71(E)(1) or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may, in the creation of its reapportionment plan, divide a precinct into portions which are bounded by visible features which are census tabulation boundaries. No such precinct shall be

divided into more than two school board districts. No school board district shall contain more than two divided precincts.

(b) The provisions of this Paragraph shall be applicable only in cases in which the number of members of the school board is not equal to the number of members of the parish governing authority of the parish in which the school board is domiciled.

(c) The provisions of this Paragraph shall not be construed as authority for a school board which has adopted or accomplished reapportionment or is able to reapportion itself using whole precincts to divide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1992, unless a school board received an objection letter to its reapportionment plan from the Department of Justice. In such event the school board shall use the provisions of this Paragraph to satisfy the objections of the Department of Justice if said objections would require a precinct to be divided and the provisions of this Paragraph shall be null and void after such reapportionment is complete."

22. Nonetheless, it is quite common for parish school boards in Louisiana, even those with the same number of members as their parish police jury, to draw redistricting plans different from the respective police jury redistricting plans. For example, of the nine school board redistricting plans drawn by

plaintiff's expert Gary Joiner in which the school board and police jury had the same number of members, five have different plans. Indeed, Bossier Parish had different redistricting plans for its school board and police jury throughout the 1980s.

23. Moreover, school boards redistricting during the early 1990s were always free to request precinct changes from the Police Jury necessary to accomplish their redistricting goals. In fact, the DeSoto Parish and Vernon Parish School Boards employed this method successfully during their recent redistrictings. Joiner testified at deposition that such a practice "is not unheard of, it has been done in other places."

24. School boards and police juries have different needs and different reasons for redistricting, and thus have legitimate reason for drawing different redistricting plans. For example, police juries are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. School board members, by contrast, are typically concerned with having a public school or schools in each district. The current (1991) Bossier Parish Police Jury Plan does not have a public school in each district.

25. Louisiana Revised Statutes, Title 17, Section 71.3E(1) and (2) is racially neutral. Its purpose is solely to promote electoral uniformity and stability.[1]

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[1] The Defendant and defendant-intervenors do not dispute this assertion, but maintain that it is irrelevant.

Bossier Parish Police Jury History and Redistricting Process

26. Incumbency protection considerations come into play in the redistricting of the Bossier Parish Police Jury, and did so in 1982. Incumbency protection has always been a consideration for the Police Jury. Among the primary redistricting criteria employed by the Police Jury during the 1980s redistricting process were one-person, one-vote considerations and respecting each incumbent's wishes regarding the configuration of his own district. According to Police Juror James Elkins and then-Parish Administrator James Ramsey, incumbency protection also was the reason the Parish Police Jury and School Board chose different redistricting plans in the 1980s.

27. Jerome Darby, who is black, was elected to the Police Jury in 1983. He currently is serving his third term as a Police Juror.

28. The Police Jury has a President and Vice President, who are elected from among the Police Jury members to one-year terms. For at least several decades, it has been the custom that the Vice President ascends to the Presidency upon the vote of the full Police Jury. Police Juror Burford testified at deposition that such a succession is "almost automatic." Even when a sitting President took the rare step of running for reelection to the Presidency, the Police Jury followed the tradition of voting the Vice President into the Presidency. In the last 30 years, every white sitting Vice President eligible to serve as a Police Juror the following year has been elevated to the Presidency.

29. Jerome Darby is the only black Police Juror ever to serve as Vice President. In January 1991, the Police Jury voted not to elevate Darby to the Presidency. This occurred just a few months before the adoption of the 1991 Police Jury redistricting plan.

30. Paul Caplis, a sitting Police Juror at that time, has testified at deposition that Darby was passed over for the Presidency "solely because he was black." Bob Burford, also on the Police Jury at that time, describes the Police Jury vote to deny Darby the Presidency as a "miscarriage of justice" which constituted "failing to recognize him as an equal." Asked why he thought the majority of Police Jurors voted against Darby, Burford replied that, although none of Darby's opponents explicitly told Burford so, Burford "thought it was because he was black." Burford, in fact, has served as President though he has served less time on the Police Jury that Darby. Indeed, every Police Juror elected to office in 1983 or before has become President, except Jerome Darby.

31. There are other indications that the Police Jury operated in an atmosphere of racial prejudice. For example, in response to a deposition question, Police Juror "Pete" Glorioso identified the *Shreveport Times* as the newspaper with the largest circulation in the area; when asked to identify the newspaper read most widely by blacks, he answered, "[A]ny one that they could get free." He further added that "some papers throw away free papers," and that at one time the *Bossier Press* "threw all the free papers to every household."

32. United States Exhibit 1 lists the members of the Bossier Parish Police Jury, and their corresponding districts, at the time of the 1990-1991 redistrict-

ing process. James Elkins was President at that time. Except for Jerome Darby, every Police Juror at that time was white.

33. At the November 13, 1990 meeting of the Bossier Parish Police Jury, the Jury authorized a contract with Gary Joiner of Petroleum Graphics to develop a redistricting plan. Mr. Joiner had been interviewed by Parish Administrator James Ramsey, who had arranged for Joiner to make a presentation to the Police Jury. Ramsey told Joiner that Joiner was required to "work with twelve members" of the Police Jury, by which he meant that Joiner had to be responsive to their concerns. To that end, Ramsey suggested that Joiner begin his work by holding one-on-one meetings with individual Police Jurors, at which each Juror could give Joiner input regarding the changes to be made to his own district.

34. Police Jurors were aware of the black population percentages in the districts under the redistricting plan proposed and adopted in 1991. Under the plan finally adopted, one district (District 7) is 43 percent black in total population, and another (District 4) is 45 percent black.

35. No member of the Police Jury ever asked Gary Joiner if it were possible to adjust district lines in either of those districts to raise the black percentage to a level over 50 percent.

36. At the time of the 1990-1991 redistricting process, some Police Jurors were specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City. At the time of the 1990-1991 redistricting process, it was obvious that a reasonably compact black-majority

district could be drawn within Bossier City. "Contiguous" here means that all units of geography in the district have some common border with some adjacent unit.

37. During the 1990-1991 redistricting process, Police Jurors had a general understanding that the Voting Rights Act requires jurisdictions to create districting plans which fairly reflect black voting strength.

38. During the 1990-1991 redistricting process, Police Jurors were aware that election precincts could be split by district lines for a number of reasons, including (a) compliance with one person, one vote and (b) compliance with the Voting Rights Act. During the 1990-1991 redistricting process, Police Jurors were told by Joiner at public Police Jury meetings that they could split election precinct lines. They also were aware that the plan they adopted in 1991 split precincts. At the April 30, 1991 public Police Jury meeting at which the final redistricting plan was adopted, Gary Joiner told the Police Jury members that "approximately 10" precincts were split in the plan. Precinct realignments are a normal practice within Bossier Parish, occurring every three or four years. Bossier Parish has made a number of such precinct realignments within the last ten years.

39. While one of the redistricting criteria set by the Police Jury during the 1990-1991 redistricting process was the inclusion of minority input, the sole black Police Juror, Jerome Darby, initially was excluded from the Reapportionment Committee. At the December 6, 1990 meeting of the Police Jury's Finance Committee, a Technical Advisory Reapportion-

ment Committee was selected to work with Gary Joiner on redistricting. Given Mr. Joiner's previous emphasis on inclusion of minority input as a redistricting criterion, Police Juror Jerome Darby considered it likely that if the redistricting standards were followed, he, as the sole black Police Juror, would be included on the Committee. Indeed, at that time, Darby had recently attended a reapportionment seminar in Monroe, Louisiana. No member of the committee (other than Joiner) had attended such a seminar.

40. Police Juror Hammack moved that the committee consist of a representative from the District Attorney's office, the Registrar of Voters, the Tax Assessor, Mr. Ramsey (the Parish Administrator), two jurors (Mr. Caplis as the rural representative and Mr. Burford as the city representative) and Mr. Joiner. All of these individuals were white. Upon a vote of ten ayes to one nay, the motion carried. Mr. Darby, the only black member of the Police Jury, voted against the motion. Darby felt personally insulted by his exclusion from the Committee.

41. At the full Police Jury meeting five days later on December 11, 1990, after black Police Juror Darby protested his exclusion from the Committee as a denial of "equal representation," the Police Jury voted to include Darby plus one other Juror, James Elkins, on the Committee. Elkins testified at deposition that he has "no earthly idea" why the Jury voted to respond to Darby's request by placing Elkins, as well as Darby, on the Committee.

42. The following chart reflects the population characteristics as of the 1990 Census of the Police Jury districting plan adopted in the 1980s:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	10,108	40.90%	1,845	18.25
2	10,099	40.77%	1,423	14.09
3	7,906	10.20%	1,889	23.89
4	6,154	-14.22%	2,833	46.03
5	7,569	5.50%	922	12.18
6	10,545	46.98%	954	9.04
7	5,278	-26.43%	2,749	52.04
8	5,776	-19.49%	801	13.86
9	6,835	-4.73%	1,262	18.46
10	5,645	-21.31%	1,801	31.90
11	4,983	-30.54%	539	10.81
12	5,185	-27.73%	363	7.00

None of the Police Jury districts was majority black in voting age population in 1990. Following the instructions of the Police Jury, Gary Joiner used the 1980s as a starting point for drawing a new redistricting plan. The Police Jury's goal was to change that plan as little as a possible to adjust for population shifts and keep the mean population deviations of the districts below plus or minus five percent. By changing his own district as little as possible, each Police Juror hoped to retain constituents familiar with him, thus maximizing his chances for reelection.

43. Protection of incumbents played a critical role in the 1990-1991 redistricting of the Police Jury. As a general matter, district lines were changed so that they came between the residences of Police Jurors, and incumbency was always a consideration. Incumbency considerations were behind the Police Jury's rejection of the School board's suggestion in 1990 that the bodies hold joint redistricting processes. During the 1990-1991 Police Jury redistricting process, the

boundary between Districts 11 and 12 was deliberately drawn in such a way as to prevent incumbents Hammack and Elkins from residing within the same district. Hammack also asked Police Juror Caplis to agree to change the lines separating their districts so that a potential candidate, Eddie Shell, would be placed in an open district (caused by the retirement of one of the incumbents) rather than in Hammack's district; Caplis agreed to accommodate Hammack, and the change was make. Police Juror Burford's district boundary was deliberately moved across Old Minden Road in Bossier City to ensure that Burford was not placed in the same district with Brad Cummings, a potential opponent. Several Police Jurors discussed election precinct realignments with Voter Registrar William Johnston, but the Police Jurors were most concerned with the configuration of precincts within their own individual districts. The 1991 Police Jury plan protected all incumbents who intended to run for reelection by keeping their residences in separate districts.

44. At the January 15, 1991 meeting of the Bossier Parish Police Jury, Mr. Joiner presented each Police Juror with a questionnaire and asked that each of them complete it, making notations of items to be addressed during reapportionment. He also told the members of his plan to interview each member individually and as a group in several open meetings.

45. Between the January 15, 1991 meeting and the final adoption of the Police Jury plan on April 30, 1991, each of the twelve Police Jurors met with Gary Joiner in Joiner's office to view proposed redistricting plans on Joiner's redistricting computer. Present at each meeting were Joiner and from one to three Police

Jurors. The intent of the meetings was to find out if any incumbents had concerns with their own districts. To that end, Joiner encouraged groups of incumbents who lived in neighboring districts to come to him so that their concerns as incumbents could be worked out together. At these meetings, each Police Juror focused primarily on the configuration of his own district. These meetings with Joiner were not open to the public.

46. The 1990-1991 redistricting process thus took place in two phases. The first was a closed phase in which individual Police Jurors met with Joiner to discuss the plan, and Joiner devised a proposed plan with which all Police Jurors could agree. This phase took place away from public scrutiny. Once the Jurors agreed on a plan, the plan would be shown to the public. Except for some minor changes discussed at a Police Jury meeting on the day the plan was adopted, the plan agreed upon by the Police Jurors during the closed phase of the process was identical to the plan ultimately adopted.

47. Black Police Juror Jerome Darby met once with Joiner in Joiner's office a few weeks before the plan's final passage. By the time Darby met with Joiner, Joiner already had met with almost all the other Jurors and had drawn the proposed plan. Joiner told Darby that, under the proposed plan, there was a possibility for three minority individuals to be elected to the Police Jury. Joiner also told him at that time that the proposed plan was the best that could possibly be drawn for blacks in Bossier Parish, and that it was impossible to draw a black-majority district.

48. During this time period, school board member Tom Myrick also met several times with Joiner in

Joiner's office, accompanied by one or more police jurors. Myrick lives near Benton, in an area close to a heavy concentration of black population. This area would likely be included in any majority-black district to be drawn in the norther part of Bossier Parish.

49. The result of the private meetings with Joiner were maps of proposed redistricting plans which were presented from public review at public meetings held by the Police Jury. The proposed maps were made available for inspection by the public at the Police Jury office, but not until the day of the public meeting. No extra copies of these maps were available for members of the public to take home with them. Joiner stated that the Police Jury's common procedure was to allow members of the public to make their own copies. The map of the proposed plan on display at the public meetings which was ultimately adopted was too large to be copied.

50. These public meetings were held at 2:00 p.m. on weekdays, when many black residents of the parish were at work. Black citizens previously had asked that these Police Jury meetings take place at night, but those requests were not granted.

51. The public meetings were advertised in one newspaper. The Police Jury instructed its staff to place advertisements in the "minority media." The Police Jury, however, placed advertisements only in the *Bossier Tribune*, its usual legal advertiser. *The Bossier Tribune* is not a widely read newspaper in Bossier Parish, and is not part of "minority media."

52. The first public Police Jury meeting to discuss proposed redistricting plans was held on April 8, 1991. Mr. Joiner presented three plans during this meeting.

The data revealed that the ideal population for a Police Jury district is 7,174. None of the plans had a black-majority district. Mr. Joiner represented that the black population was not sufficiently concentrated in the parish to draw even one black-majority district. Mr. Joiner further informed the Police Jury that subdividing precincts would be permissible from April 1, 1991 through May 15, 1991. According to Joiner, the Police Jury likely was previously aware of this fact; the Jury was a member of the statewide Police Jury Association (which lobbied to get this statutory "window" approved) and was thus in "constant communication" with the Baton Rouge election office.

53. At the April 25, 1991 Bossier Parish Police Jury meeting, Gary Joiner presented three plans to the Police Jury. These alternative plans drawn by Joiner were called Plan 5, Plan 8, and Plan 9. A number of members of the black community attended and asked about the creation of a black-majority district. Joiner stated that the wide distribution of blacks in the parish made a black-majority district "statistically impossible." At deposition, Joiner acknowledged that he knew at that time that drawing two black-majority districts within Bossier Parish was "statistically" possible, in that you could create two majority-black districts at a census block level with the correct population, ignoring precinct considerations.

54. Police Jurors responded to questions regarding a black-majority district at the April 25, 1991 meeting. To repeated questions suggesting the possibility of creating a black-majority district, Police Jurors would impatiently snap, "Don't you understand? We already told you it can't be done!", or

words to that effect. Police Juror Glorioso demanded, "Why are you asking for this? You're already being represented adequately!"

55. Black resident Octavia Coleman, on behalf of a number of the black attendees, asked for a copy of the map of Joiner's proposed plan. Joiner said that the display map he had was too large to copy, and that residents would have to come down to the Police Jury office to see it.

56. A number of black attendees asked about the creation of a black-majority district based in the town of Haughton. In response, Joiner pointed out that moving the (heavily black) Princeton area into District 4 (43 percent black under the adopted plan), which includes Plain Dealing, would cause "the problem" that telephone service would be long distance within that district. Under the plan ultimately adopted, however, District 4 includes both Plain Dealing and an area adjacent to the corporate limit of Benton, and telephone service is long distance between these two towns. The Police jury did not explore the subject of a black-majority district any further at the April 25, 1991 meeting. Upon Police Juror Whittington's motion, the Police Jury decided that Plan 9 would be studied further and pursued as a final plan for adoption at the April 30, 1991 meeting.

57. In 1991, there was no legal impediment to the drawing of black-majority districts in the Bossier Parish Police Jury redistricting plan.

58. At the April 30, 1991 meeting of the Bossier Parish Police Jury, Mr. Joiner presented "Plan 9" to the members. Mr. Joiner made two changes to Plan 9 after the April 25, 1991 meeting. Neither of the

changes were in response to the concerns raised by black residents at prior meetings, nor were they made to increase electoral opportunities for black voters in the parish. The Police Jury minutes reflect that the 1990 Census population statistics for Plan 9 are:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	7,372	2%	2,056	27.89
2	7,484	4%	737	9.85
3	6,847	-4%	1,728	25.24
4	6,949	-3%	3,122	44.93
5	7,561	5%	734	9.71
6	7,444	3%	274	3.68
7	6,992	-2%	3,068	43.88
8	6,899	-3%	1,471	21.32
9	7,219	0%	1,000	13.85
10	7,452	3%	2,004	26.89
11	7,019	-2%	504	7.18
12	6,850	-4%	603	8.80

However, Joiner testified at deposition that the actual figures are different, and that the total deviation range of Plan 9 as ultimately adopted by the Police Jury is 11.75 percent.

59. The plan submitted by the Bossier Parish Police Jury to the Justice Department for preclearance was as follows:[2]

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[2] The plan submitted by the Police Jury to the Justice Department differed slightly from the Plan reflected in the April 30, 1991 Police Jury minutes. The differences are not material to this case.

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	7,187	0.18%	2,069	28.8
2	7,429	3.55%	728	9.8
3	6,856	-4.43%	1,737	25.3
4	6,903	-3.78%	3,120	45.2
5	7,607	6.04%	734	9.6
6	7,444	3.76%	274	3.7
7	6,992	-2.54%	3,068	43.9
8	6,899	-3.83%	1,471	21.3
9	7,219	0.63%	1,080	15.0
10	7,452	3.88%	2,004	26.9
11	7,019	-2.16%	504	7.2
12	7,081	-1.30%	592	8.4

60. Precinct lines also were discussed at the April 30, 1991 meeting. Joiner informed the Police Jury that the proposed final plan, through splitting existing precincts, created 13 new voting precincts and thus increased administrative costs for elections. Joiner had discussed the number of precinct cuts occasioned by his proposed plans earlier in the redistricting process.

61. At the April 30 meeting, however, Joiner also informed them that precinct changes could be made after January 1, 1993 so as to consolidate some precincts and thus reduce administrative costs. In fact, according to Joiner, in his private meetings with Police Jurors, and with School Board member Myrick, the redistricting was discussed "in the hopes of consolidating" precincts, and the Bossier Parish Police Jury is at the present time considering implementing such consolidations. This anticipation of consolidating precincts as soon as practicable existed throughout the Police Jury redistricting process.

62. At this time, it was also Joiner's understanding that even before January 1, 1993, administrative costs could be reduced by placing the machines and poll workers of two precincts at one polling place. This would reduce the number of poll workers which would need to be hired by the parish.

63. After about 30 minutes of discussion before the public, the Police Jury cut off discussion to retire into executive session. After returning from executive session, upon Mr. Caplis' motion, Plan 9 was adopted with one abstention (unrelated to racial concerns), and the Police Jury authorized the preparation of the plan for submission to the Department of Justice for Section 5 review.

64. Mr. Darby explains that he voted for the redistricting plan because he was led to believe by Mr. Joiner and the other Police Jurors that it was impossible to create a black-majority district that would receive Section 5 preclearance from the Department of Justice. That was his understanding at the time of the 1990-1991 redistricting process and the subsequent 1991 Section 5 preclearance review by the Department of Justice. Having since been shown that it was at that time possible to have drawn *two* reasonably compact majority-black districts, Darby has reversed his position and now believes that he was deliberately misled in this regard during the 1990-1991 redistricting process. But for these misrepresentations, he would have voted against the plan finally adopted by the Police Jury.

65. On April 30, 1991, the Police Jury received a letter from the Concerned Citizens of Bossier Parish, a black organization, protesting the lack of openness in the redistricting process. The letter alleged that

black citizens were denied information regarding the redistricting which they had requested from the Police Jury. The letter also protested the Police Jury's decision to go into executive session to discuss redistricting at a public Police Jury meeting. Black residents state that at the April 30, 1991 Police Jury meeting, black residents specifically asked that the letter be placed in the Parish's Section 5 submission to the Department of Justice.

66. Police Juror James Elkins, Parish Administrator James Ramsey, and Gary Joiner were among those responsible for making the Section 5 submission to the Justice Department. Though Joiner played a role, the submission was mailed from the courthouse. Police Juror Burford testified at deposition that as a rule, the Police Jury was "very, very careful to keep correspondence" it received. Parish officials involved in the redistricting process, including Police Juror Burford, acknowledged that the April 30, 1991 Concerned Citizens letter normally would have been included with the submission. The April 30, 1991 letter was not included with the submission sent by he Police Jury.

67. At the May 14, 1991 Bossier Parish Police Jury meeting, Mr. Darby referred to the April 30 Concerned Citizens letter regarding reapportionment procedures.

68. The Police Jury sent its Section 5 submission of the 1991 redistricting plan to the Department of Justice on May 22, 1991. The Department of Justice received the Bossier Parish Police Jury redistricting plan on May 28, 1991. Additional information was received by the Department on July 19, 1991. In a July 29, 1991 letter from John R. Dunne, Assistant Attorney General for Civil Rights, to Mr. James Ramsey, Mr. Dunne informed the Police Jury that the Attorney General did not interpose any objection to the 1991 Police Jury redistricting plan.

69. During the course of the 1990-1991 redistricting process, some Police Jurors rejected the idea of drawing any black-majority districts in the 1991 redistricting plan. The reasons given by Police Jurors for this rejection vary. Police Juror Burford testified at deposition that among other things, he felt it would be desirable to have Jerome Darby continue on the Jury as a black member elected from a white-majority district, and to maintain a number of other white-majority districts with sizeable black populations, but to avoid the creation of a district with a black-majority. Police Juror Glorioso testified that the Police Jury never seriously considered the idea of creating a black-majority district because there was already one black person sitting on the Jury.

70. While some Police Jurors testified at deposition that a plan containing a black-majority district would have crossed too many precinct lines, thereby creating new precincts and raising election costs, the Police Jurors have been told by Joiner at the April 30, 1991 meeting that the plan they were adopting in 1991 created at least ten new precincts, and thus raised election costs. Actually, 20 new precincts were created when the 1991 Police Jury plan was drawn. Moreover, at the time of the adoption of the 1991 plan, Police Jurors did not know and did not seek to learn the number of precincts that would have to be split to create a black-majority district. Joiner never informed the Police Jury of an exact number of additional split precincts that would be caused by drawing

a black-majority district, and no Police Juror ever asked for this information. To Joiner's knowledge, the Police Jury never gave him a maximum number of precinct splits they deemed acceptable. The plan ultimately adopted by the Police Jury was not the redistricting alternative with the lowest number of splits.

71. Joiner testified at deposition that any factors arguing against the creating of a majority-black district "would be lumped under" the general category of concerns regarding the splitting of precincts.

72. Several Police Jurors testified at deposition that a black-majority district would contain unacceptably narrow or otherwise oddly-shaped lines. They claimed to base this conclusion on their examination of black population concentrations within the parish on Gary Joiner's computer, or on their own personal knowledge of black concentrations within the parish. Police Juror Burford testified that Joiner did not show him anything to support this conclusion. According to the deposition testimony of Police Jurors involved in the process, at no time during the 1990-1991 redistricting process did any Police Juror see a map of a black-majority district showing the actual boundary lines of such a district. No parish official who testified has any knowledge that Mr. Joiner ever drew such a district, nor that any Police Juror ever asked him to attempt to do so. Further, at least some Police Jurors acknowledged that any such concerns relating to shape would not apply to a black-majority district contained within Bossier City.

73. Several Police Jurors admit that it was not their understanding at the time of the 1990-1991 re-

districting that there was anything potentially illegal about drawing oddly-shaped black-majority districts.

74. Police Juror Burford admitted that if a district in the Police Jury plan ultimately adopted was in his view oddly-shaped, that he would "have a problem" with it only if it were drawn specifically to achieve a particular racial proportion.

75. Former Parish Administrator Ramsey testified at deposition that a black-majority district in the northern part of the parish would have to include Benton and Plain Dealing, which are too different to be joined, and whose black communities would oppose being combined into a district. Ramsey testified that neither he nor any of the Police Jurors ever asked the black communities of either of those two towns whether they would oppose being combined into a single district; that black citizens inquiring at Police Jury meetings about black-majority districts were not asked about this point; and that he really did not know if black persons in either of those two towns would prefer a plan with all white-majority districts over being combined into a single district. Even if this truly had been a concern, it would of course be inapplicable to a black-majority district within Bossier City.

76. The plan ultimately adopted contains a (white-majority) northern parish district which includes Benton and Plain Dealing. Former Parish Administrator James Ramsey testified that this created a "bad situation" for the Juror representing the district.

77. One Police Juror testified at deposition that a black-majority district in Bossier Parish would have

had to be 30 miles in length, which would be unacceptably long. The Police Jurors were aware at the time of redistricting that the current (1991) Police Jury plan contained a white-majority district which was approximately 30 miles long. The district in question was further elongated as a result of negotiations among several of the Police Jury incumbents. The elongation was designed to ensure an incumbent's reelection. Police Jurors were aware that a black-majority district contained within Bossier City would be considerably shorter than 30 miles long.

78. The plaintiff's expert felt that it was unlikely that the Police Jury could have drawn two black-majority districts in Bossier Parish while still protecting all incumbents who were running for reelection.

79. At the November 9, 1993 public Police Jury meeting, George Price, representing the local NAACP chapter, called for the Bossier Parish Police Jury and School Board "to publicly meet and develop a redistricting plan that will increase the number of minorities on these boards and that more accurately reflect the make-up of this parish." Price also called upon the police jury to "seize" the opportunity to "assign and employ more blacks throughout the parish." Price had previously sent a letter to the Police Jury on October 7, 1993 which included the concern that the 1991 Police Jury redistricting plan did not reflect "the make-up of our parish." Once the idea of redrawing the police jury districts was presented, the Police Jury dismissed it real quickly. On January 11, 1994, the Police Jury passed unanimously a motion to make public the Police Jury's intention to maintain its current district lines. This

was the only Police Jury meeting at which the Police Jury passed such a resolution.

Bossier Parish School Board Redistricting Process

80. In 1992 the Bossier Parish School Board undertook its obligation to present a redistricting plan for preclearance. It hired Mr. Gary Joiner to assist in the effort. Mr. Joiner met with the Board and explained what he perceived to be the requirements of the Voting Rights Act of 1965. In the course of his explanation, he told the board about the Police Jury plan and told the Board that because the Police Jury and the School Board were the same size and because both used twelve single-member districts the adoption of the Police Jury plan was a viable option. He also told the Board that the Police Jury plan had been precleared and that the same plan from the School Board would unquestionably get preclearance as well. Mr. James Bullers, Bossier Parish District Attorney and legal counsel for the Board, concurred in that opinion.

81. The Bossier Parish School Board adopted a different plan from the Police Jury for the 1980s due to incumbency protection considerations.

82. The Bossier Parish School Board districts in effect during the 1980s were malapportioned after the 1990 Census. The district population figures after the 1990 Census were:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	9,233	28.71%	1,230	13.32
2	7,889	9.97%	1,291	16.36
3	13,598	89.56%	1,501	11.04
4	6,552	-8.66%	3,055	46.63
5	6,498	-9.42%	962	14.80
6	7,963	11.00%	1,579	19.83
7	5,867	-18.21%	2,569	43.79
8	6,516	-9.17%	1,149	17.63
9	6,229	-13.17%	1,374	22.06
10	6,054	-15.61%	1,824	30.13
11	4,085	-43.05%	460	11.26
12	5,604	-21.88%	387	6.91

83. The School Board was not under the same time constraints to redistrict as the police jury following the availability of the 1990 Census. The next scheduled School Board elections were not until October 1994. At the October 18, 1990 meeting of the Bossier Parish School Board, the School Board unanimously voted to authorize Dr. Peterson to "convey to the police jury that the School Board would agree to work with a professional demographer to hopefully end with the same geographical boundary lines."

84. The Police Jury was not interested in pursuing the redistricting process jointly with the School Board because of incumbency protection considerations.

85. One School Board member, Tom Myrick, did participate in the Police Jury redistricting process. Myrick met with Joiner, who drew the Police Jury plan, some five times during the Police Jury process. On these occasions, Myrick was accompanied by at least two of the Police Jury members, Rick Avery and

Tommy Scarborough, all of whom represent districts, portions of which could be used to create a black-majority district north of Bossier City. Myrick was only concerned with the configuration of his own district. Joiner gave Myrick a map of the Police Jury plan at that time.

86. The School Board took up the subject of redistricting again at its May 2, 1991 meeting. The Police Jury had just adopted its plan on April 30, 1991, and Joiner attended the meeting at the invitation of the Superintendent of Schools, W.T. Lewis. Joiner discussed the demographic changes in the parish since the 1980s redistricting. Joiner also discussed the concentrations of black population of the parish. Joiner stated that while in the future some majority-black School Board districts could be created, at that time there were no concentrations of black population heavy enough to create a majority-black district. Joiner further explained that, unlike the Police Jury, the School Board had more than adequate time to draw its districts since members would not run in the new districts until 1994. By unanimous vote, the Board engaged Mr. Joiner for the redistricting project, which Joiner estimated would take 200 to 250 hours.

87. Joiner's estate of his time included developing alternative plans, and School Board members considered drawing a plan different from the Police Jury at the start of the process. No member of the all white School Board expressed interest in drawing black-majority districts. The discussions about drawing a plan different from the Police Jury plan focused on concerns about equalizing population among the districts and not on achieving a racial balance.

88. The Board did not give any specific redistricting criteria to Joiner other than to draw a plan that meets all the legal requirements. Joiner never used school attendance zones for the purpose of drawing a map. The idea of keeping "communities" together was not specifically stated to Joiner as a criterion for redistricting.

89. At the September 5, 1991 Bossier Parish School Board meeting, Joiner distributed configuration maps of the new precincts for the Bossier Parish Police Jury, which had been precleared by the Justice Department on July 29, 1991, along with the police jury redistricting plan. Joiner told the School Board members that he provided the precinct maps because they would have to work with the Police Jury to alter the precinct lines. The School Board could not itself alter these precinct lines and that would limit its redistricting options. Joiner also said he planned on meeting with School Board members in small groups to develop a plan that would meet Department of Justice approval.

90. At this point, Board member Tom Myrick suggested adopting the Police Jury plan.

91. The Police Jury plan did not pair Myrick with another School Board incumbent or announced School Board candidate, and placed Myrick in a white-majority district. Myrick lives in the area which would be included in the northern parish black-majority district under the various alternative plans.

92. Following the October 17, 1991 School Board meeting, Joiner distributed maps to the Board illustrating the relationship of the present Bossier Parish School Board districts to the districts approved by

the Bossier Parish Police Jury, so that School Board members could see how their present districts would be affected if they adopted the police jury plan. No other alternative plans were discussed at this time. The School Board members gave no consideration at this time to the creation of a minority voting district.

93. By the spring of 1992, it had come to the attention of the local chapter of the NAACP that the School Board was in the planning stages of the reapportionment of School Board districts. On March 25, 1992, George Price, as President of the local chapter of the NAACP, wrote to Superintendent Lewis requesting that, in light of the fact that there were no minorities on the Board, the NAACP wished to be included in all phases of the redistricting process. Price's letter was distributed to the members of the Board. The Board did not respond to Price's letter and took no action to include the NAACP in the redistricting process.

94. After hearing no response from the School Board, Price wrote again to Superintendent Lewis on August 17, 1992, to request that the Bossier Parish Branch of the NAACP be allowed to come before the Bossier Parish School Board and present their views on the redistricting. Price also stated that the NAACP would oppose any plan that, like the police jury plan, diluted minority voting strength.

95. At the August 20, 1992 meeting of the Bossier Parish School Board, Price, representing the NAACP, addressed the Board regarding immediate concerns that affect blacks in the Bossier Parish School system. At this meeting, Price presented the board with nine proposals: 1) the appointment of a black to fill the current vacancy on the Board; 2)

development of an early recruitment program for black teachers; 3) diligence in recruiting, hiring, retaining, and promoting blacks; 4) offering alternative certification to liberal arts majors; 5) development of a reassignment and transfer program to insure parity or equalization of minorities at all schools; 6) organizing a recruitment program with predominately black colleges; 7) encouraging Parish graduates to pursue education as a major and return to Bossier to work and live; 8) encouraging the Superintendent and Board to be actively involved in all communities; and 9) guaranteeing participation of every Parish citizen in reapportionment of School Board districts. No specific action was taken by the school Board in response to Price's presentation.

96. At some point during the school Board redistricting process, Joiner met with the School Board members with his computer at a time other than a regularly scheduled Board meeting. While all of the School Board members remember the meeting, no one remembers the date. Board member Barry Musgrove believes the meeting occurred in August of 1992. No School Board meeting minutes reflect such a meeting, and there was no notice to the public of the meeting. At this meeting, Joiner had his computer set up and individual members or groups of members gathered around him as he demonstrated alternative redistricting plans or "scenarios" for creating districts. This is the only time that the Board was shown alternative "scenarios."

97. Despite the NAACP's repeated requests to participate in the redistricting process, it was not given notice of such a meeting and thus did not attend. In considering the adoption of a redistricting plan and

after listening to the comments of concerned citizens, the school board consulted only with its attorney and cartographer and did not consult with any special interest group or racial organization, either white or black.

98. Frustrated by the School Board's lack of responsiveness to his request to become part of the redistricting process, Price contacted the NAACP Redistricting Project in Baltimore in the summer of 1992. The Project developed a partial plan for Price to present to the School Board that consisted of two districts which reflected the black voting strength in Bossier Parish. The NAACP alternative plan distributed the population in those two district as follows:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black VAP*
1	6,913	-3.6%	56.8%	50.6%
2	6,854	-4.5%	62.6%	58.9%

99. The NAACP did not draw a complete plan because they were most interested in demonstrating ways to more fairly reflect black voting strength and did not want to raise issues as to the other districts: the School Board was free to draw them in any way they chose. When Price showed this plan to a school district official, he was told that the plan was unacceptable and that he would need to come up with a plan that contained all twelve districts. Price relayed this information back to the NAACP Redistricting Project, which then drew a plan for all twelve districts.

100. At the September 3, 1992 meeting of the Bossier Parish School Board, Mr. Price, speaking for the NAACP, Men's Club of Bossier, Voter's League,

Concerned Citizens, Bossier Housing Tenant Coalition and the Concerned Parents of Plain Dealing, presented a map of all twelve districts and made a statement on behalf of the NAACP. Price stated that black-majority districts could be created for the Bossier Parish School Board. The School Board members stated that they would need to see a bigger map before they would analyze it. The NAACP alternative plan distributed the population as follows:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	6,874	-4.18%	3,908	56.85
2	6,875	-4.17%	4,311	62.71
3	6,886	-4.01%	2,595	37.69
4	7,289	1.60%	645	8.85
5	7,002	-2.40%	522	7.46
6	7,188	0.20%	1,000	13.91
7	6,823	-4.89%	555	8.13
8	7,457	3.94%	950	12.74
9	7,427	3.53%	584	7.86
10	7,414	3.35%	1,116	15.05
11	7,395	3.08%	514	6.95
12	7,458	3.96%	601	8.06

101. District 3 contained Barksdale Air Force Base. One census block constituting most or all of the base contains 3,327 people. Most of these people are not registered to vote in Bossier Parish. The distribution of the population in District 3 without the census block which includes the military based is:

District	*Total Pop.*	*Black Pop.*	*Black VAP*
3	3,559	53.5%	51.0%

102. Both Gary Joiner and Parish District Attorney James Bullers were present at the meeting. Both summarily dismissed the NAACP plan. The stated reasons for their dismissal was that the plan's district lines crossed existing precinct lines, and therefore violated state law. Joiner and Bullers were aware of the option of obtaining precinct line changes from the police jury.

103. At the September 17, 1992 School Board meeting, Jerome Blunt was sworn in as the first black person to serve on the School Board. Blunt was appointed by a vote of 6-5 by the School Board following a resignation. The NAACP had lobbied the School Board for the appointment of black person.

104. The narrow vote in favor of Blunt's appointment was contemporaneous with the 1992 School Board redistricting process. Board member Michelle Rodgers testified at deposition that three white constituents called her to express bitter opposition to Blunt's appointment. These constitutes charged that Rodgers supported him only because he was black, and that she had "bowed down" to the NAACP.

105. Blunt served in the office only six months. Blunt was defeated in a special election by a white candidate, Juanita Jackson. The district in which he ran was 11 percent black in population, according to the 1990 Census.

106. At the September 17, 1992 Bossier Parish School Board meeting, Price, speaking for the NAACP, Men's Club of Bossier, Voter's League, Concerned Citizens, Bossier Housing Tenant Coalition and the Concerned Parents of Plain Dealing, again presented for consideration the redistricting

plan developed by the NAACP. Also at the September 17, 1992 Bossier Parish School Board meeting, the School Board unanimously passed a motion of intent to adopt the Police Jury plan. It was announced that the plan would be on display, a public meeting would be held on September 24, 1992 and final action would be taken at the October 1, 1992 School Board meeting. The board did not direct Joiner to conduct any further study of the NAACP plan. The Board did not delay any further action on the adoption of the Police Jury plan until Joiner had more time to study the NAACP plan, despite the fact that Joiner had previously told the School Board that there was no reason for haste, because the next School Board election was in October 1994.

107. Blunt did not participate in any discussion about the redistricting process. In his opinion, the board had already made up its mind to adopt the Police Jury plan by the time he took office.

108. A public hearing was held on September 24, 1992. All of the members of the Board were present except Susan Barrera and Boyce Hensley, District Attorney Bullers was also present. Forty people registered their attendance, although the room, which has a capacity of 75 persons, was overflowing. Fifteen people, the majority of whom were black, addressed the Board. All black residents voiced their opposition to the School Board's adoption of the police jury plan because, they alleged, it diluted black minority voting strength. Price, as the President of the NAACP, presented a petition which contained over five hundred signatures, constituting the largest petition received by the School Board since at least 1990. Price requested that the School Board give the plan developed

by the NAACP its utmost consideration and that it be used as a foundation for the creation of three districts that increase the possibility of blacks to be elected to the School Board. Price also admonished the School Board to be cautious about abdicating its responsibility to Gary Joiner, who is not a lawyer. Price advised the board of the supremacy clause of the United States Constitution and that the state law governing precinct alterations could not supersede compliance with the Voting Rights Act. He also stated that the Justice Department's preclearance of the Police Jury plan in 1991 did not preclude an objection to the School Board's adoption of the plan in light of the submission of the NAACP plan to the Board which demonstrated that it was possible to draw a plan that did not dilute minority voting strength. He also told the Board that the fact that the Police Jury plan was precleared did not immunize the Police Jury or the School board if they adopted the plan from litigation under Section 2 of the Voting Rights Act.

109. At the October 1, 1992 School Board meeting, the Bossier Parish School Board passed a resolution adopting the Police Jury plan. The vote was 10 ayes, 1 abstention and 1 absent. Jerome Blunt, the School Board's only black member, abstained. Blunt abstained because he felt that by abstaining, he would draw more attention to the fact that the plan diluted black voting strength. Barbara W. Gray was absent. The plan adopted has two districts in which incumbents are pitted against each other and two districts in which no incumbents reside. The population figures for the adopted plan are:

District	*Total Pop.*	*Deviation*	*Black Pop.*	*Black %*
1	7,187	0.18%	2,069	28.79
2	7,429	3.55%	728	9.80
3	6,856	-4.43%	1,737	25.34
4	6,903	-3.78%	3,120	45.20
5	7,607	6.04%	734	9.65
6	7,444	3.76%	274	3.68
7	6,992	-2.54%	3,068	43.88
8	6,899	-3.83%	1,471	21.32
9	7,219	0.63%	1,080	14.96
10	7,452	3.88%	2,004	26.89
11	7,019	-2.16%	504	7.18
12	7,081	-1.30%	592	8.36

110. The School Board proceeded to adopt its final plan on October 1, 1992. The plan was not submitted to the Justice Department for preclearance until January 4, 1993.

111. In its order of October 1, 1970, modifying the April 29, 1970 decree, the court in *Lemon v. Bossier Parish School Board*, C.A. No. 10.687 (W.D. La), a school desegregation case, mandated the establishment of a Bi-Racial Advisory Review Committee. The committee was to be comprised of an equal number of back and white members. The purpose of the committee was to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." The court directed the school board to supply the committee with information requested by the committee.

112. The establishment of a Bi-Racial Committee to "analyze and make recommendations as to whether or not the present desegregation plan is to be reviewed, and if so, how," was also incorporated into the

consent decree on April 12, 1976, in the *Lemon* case. The Committee, however, met only two or three times, and only the black members of the Committee attended. The Committee never met again after the first scheduled meetings in 1976.

113. Shortly after the School board's redistricting plan was submitted to the Justice Department for Section 5 review, another committee, this time called the "Community Affairs Committee," was formed at the request of the black community. The committee held its first meeting on January 26, 1993.

114. It was originally the Board's intent to use the Community Affairs Committee to satisfy its requirement under the 1976 consent decree in the *Lemon* school desegregation case, to have a "Bi-Racial Committee." Pursuant to the Consent Decree, the bi-Racial Committee was "charged with the responsibility of investigating, consulting and advising the court and school board periodically with respect to all matters pertinent to the retention of a unitary school system."

115. One of the purposes of the committee was to address the concerns of the black community. The concerns involved the following goals: 1) develop and maintain an early recruiting program, starting at least at the sophomore level of college, and include lay persons from the community in this process; 2) demonstrate diligence in recruiting, hiring, retaining, and promoting African Americans in the Bossier Parish School System; 3) develop a reassignment and transfer program designed to insure parity or equalization of minorities at all schools; (Elementary, Middle, and High) so that black children can see people from their ethnic background working as profession-

als; 4) organize and maintain a recruitment program with Grambling State, Southern University, Xavier University, and Dillard University to increase numerically the number of black teachers in the Bossier Parish School System; 5) establish and maintain a tracking system of Bossier Parish graduates so as to counsel and encourage as many as possible to pursue education as a major, and to return to Bossier Parish to work and live; and 6) encourage the Superintendent and each School Board member to become actively involved in all communities, and to bring and receive information calculated to improve the Bossier Parish School System on behalf of all citizens.

116. The School board disbanded the Committee after three months. Board member Musgrove stated that the reason the committee was disbanded was because, "the tone of the committee made up of the minority members of the committee quickly turned toward becoming involved in policy."

117. This action created strong resentment on the part of the black community. On July 14, 1993, a coalition of black groups, including the NAACP, Concerned Citizens of Bossier Parish, the Men's Club of Bossier, and the Voting League of Bossier Parish, sent a letter to the Board requesting a response as to the steps the Board planned to take regarding the following concerns: 1) the establishment of a community advisory group which would supply input to the School Board concerning educational matters; 2) recruitment and placement of black teachers and administrators in the Bossier Parish School System; 3) plans to address the low math/science scores of black children and to provide scores of Bossier Parish students, along racial lines; 4) the

updated status of the Bossier Parish School Board Redistricting Plan; 5) the need to establish a committee to study the possibility of including a black history year round program in the Bossier Parish School System; 6) the need to provide the policy and procedure for bidding on contractual services provided to the School system; and 7) the need to provide a list of recent contractors that have completed work for the Bossier Parish School System.

118. On March 5, 1993, the Justice Department acting pursuant to its responsibilities under Section 5 of the Voting Rights Act, issued a timely request for additional information concerning the Bossier Parish School Board's redistricting plan. The school board provided additional information.

119. On August 30, 1993, the Attorney General interposed a timely objection to the 1992 redistricting plan for the election of Bossier Parish School Board members. The letter informed the School Board that while the Justice Department was aware that it precleared the identical redistricting plan for the Bossier Parish Police Jury districts in 1991, it had taken into account "new information," particularly the 1991 Police Jury elections held under the 1991 redistricting plan and the 1992 redistricting process for the School Board. An alternative plan which demonstrated "that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts" and which was preferred by members of the black community was rejected by the School Board and the Board "engaged in no efforts to accommodate the requests of the black community." The letter further acknowledged that while "the School Board is not required by

Section 5 to adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." The Attorney General also rejected the School Board's argument that state law preventing splitting of precincts precludes adoption of a redistricting plan with majority-black districts, noting that state law allows Police Juries to realign precincts.

120. At the September 3, 1993 School Board meeting, in executive session, the Board discussed its options in light of the Attorney General's objection. All of the School Board members had been given copies of the objection letter. The Attorney General's letter articulated the reasons for the objection and specifically pointed out the Board's option of consulting with the Police Jury in an attempt to change precinct lines to allow the drawing of a plan which fairly reflects minority voting strength.

121. There was no discussion of precinct realignment or conducting a further study of the potential to draw black-majority districts. The Board voted unanimously at that meeting to ask the Justice Department to reconsider the objection.

122. In a letter dated September 3, 1993, District Attorney Bullers requested reconsideration of the objection.

123. At the September 16, 1993 School Board meeting, NAACP President Price again addressed the board representing a coalition of black organizations, and requested that the School Board reconsider its decision to ask the Justice Department to withdraw the objection, because the Police Jury plan adopted by

the Board diluted black voting strength. The Board never responded to Price's suggestion.

124. Price again appeared before the School Board on November 18, 1993 to discuss the concerns that had been raised by the black community in its letter of July 14, 1993 and to which the School Board had failed to respond. School Board member Musgrove admitted that there is a need for a better relationship between the Board and the minority community.

125. In a letter dated December 20, 1993, the Attorney General denied the Bossier Parish School Board's request for reconsideration of the objection. The letter concluded that "given the apparent pattern of racially polarized voting in parish elections, black voters will be unable to elect a candidate of their choice to the school board under the objected-to redistricting plan." The letter also referenced the failure of the School Board "to accommodate the request of the black community that the board develop a plan with two black-majority districts." The letter also noted that, despite the fact the original August 30, 1993 objection letter noted that "the school board could have, but did not, seek a realignment of voting precincts by the Bossier Parish Police Jury that would have facilitated the development of a plan that fairly reflects black voting strength," the School Board made no attempt at this potential solution to its state law concerns. The letter noted the School Board's argument, made for the first time in its request for reconsideration, that under *Shaw v. Reno*, 113 S. Ct. 2816 (1993), the NAACP plan "is 'so irrational on its face that the plan could be understood only as an effort to segregate voters into separate voting districts because of their race.'" The letter

stated, however, that the Board provided no explanation or basis for this conclusion. "Moreover, the Board does not appear to dispute the fact that black residents are sufficiently numerous and geographically compact in the parish so that two black-majority districts could be created. You contend only that it is not possible to do so given current precinct configurations." Accordingly, the School Board's reliance on *Shaw v. Reno*, was deemed "pretextual."

126. Following the January 20, 1994, School Board meeting, at the request of Board member Barry Musgrove, the School Board requested that Gary Joiner review the redistricting plan to see if there was any possibility that he may have missed any alternative configurations.

127. At the March 17, 1994, School Board meeting, Price inquired into the status of Joiner's progress at developing alternative proposals. In a letter dated March 18, 1994, District Attorney Bullers requested from Joiner a report regarding the status of his attempts to develop alternative redistricting proposals. No School Board member has ever requested that Joiner produce maps or otherwise demonstrate any of his attempts to draw black-majority districts for the Bossier Parish School Board.

128. At no time during the redistricting process, including up to the present time, did the Bossier Parish School Board or any other representative of the School Board ever direct Gary Joiner to approach the Police Jury to request that the precinct lines be redrawn to enable the creation of majority-black School Board districts.

Geographic Compactness and Analysis of Alternative Plans

129. Dr. George Castille is qualified as an expert in Louisiana geography. He is competent to analyze maps and accompanying statistics and to testify to that analysis.

130. William S. Cooper is qualified as an expert in redistricting and geographic information system software as it relates to redistricting. He is competent to draw and analyze maps, to analyze accompanying statistics, and to testify to that analysis.

131. The boundary markers used in the 1992 Bossier Parish School Board redistricting plan are roads, streams, railroads, and corporate limit lines. Within Bossier City, the School Board's plan also uses the limits of Barksdale Air Force Base.

132. The use of corporate limit lines as election district boundaries is problematic, in that corporate limits are usually arbitrary, and often divide racial concentrations or other communities of interest. This division can occur when corporate lines are not revised frequently enough to accommodate urban growth. It can also occur as a result of selective, discriminatory policies regarding annexation and deannexation. People can have common interests for redistricting purposes even though they are split by corporate boundaries.

133. One factor to be avoided in redistricting is "fracturing," defined by plaintiff's expert Gary Joiner as drawing boundary lines to divide a "population that has a traditional cohesiveness, lives in the same general area, [and] has a lot of commonalities," where this division is effected with "a purposeful intent to

splinter . . . to fracture that population into adjoining white districts."

134. Among the considerations in determining "commonalities" within a district (or between two areas) are socioeconomic commonalities among the residents thereof.

135. Black persons in Benton and in Plain Dealing have some commonalities of interest.

136. The community of Benton has expanded outside the corporate limits in several areas, and the corporate limits fragment those black neighborhoods that straddle the corporate line. By following the corporate limits, the proposed plan's district boundary lines fragment black neighborhoods, splitting them between Districts 3 and 4. One cluster of black families lives along Shaffers Road on the east side of Benton, and a large black subdivision has developed along Highway 162 just north of the Benton Community Club Cemetery. Another group of black residents is located immediately north of the Benton corporate limits at the end of Second Street.

137. In the school board's proposed plan, the area within Bossier City bounded by Shaver, Beckett, Fuller and McArthur Streets is included within District 8 rather that District 7 located immediately to the west. The boundary used, a railroad track, separates this neighborhood from a larger black residential area on the District 7 side of the line. A nearby road could have been used as the boundary marker, keeping the two adjacent communities together.

138. Plaintiff's expert Gary Joiner testified at deposition that though he could not be certain without

further inquiry, this boundary line "appears to be an example of fracturing." Joiner also testified that it is likely that there are "numerous options" available to avoid this instance of fracturing short of causing another precinct split.

139. Plaintiff's expert Gary Joiner employs, as a standard part of his redistricting mapping work, one test for compactness: the "Swartzburg major-minor axis test." This test is run on Joiner's computer. Joiner ran this test on the former and current Police Jury plans. At least four of the twelve Police Jury districts drawn in the 1991 Police Jury plan failed this compactness test. Joiner suggested at deposition that at least two of the twelve districts (Districts 10 and 12) would fail this compactness test because they were "elongated." Joiner also stated that Districts 1 and 4 of the plan were not compact either.

140. Former Parish Administrator Ramsey, who was involved in the redistricting process, noted that the northern parish district (District 4) in the 1991 Police Jury plan takes up almost half of the geographic area of the parish. According to Ramsey, this district contains an inordinate number of roads and drainage areas to be maintained, and is "impossible to represent."

141. The plan adopted by the school board in 1992 does not have a public school in each district. The district lines do not correspond with school attendance zones within Bossier Parish.

142. Black students comprise approximately 29 percent of the student enrollment in the Bossier Parish school system. As of March 24, 1994, there are five schools in the Bossier Parish School District in

which the majority of the students are black: Bossier Elementary (77.1% black), Butler Elementary (74.2% black), Plain Dealing Elementary (77.7% black), Plain Dealing Middle/Senior High School (76.9% black), and Plantation Park Elementary School (51.9% black). Bossier and Butler Elementary Schools are the only two schools within the proposed Bossier City black-majority district in the NAACP School Board redistricting plan (or within similar alternative districts drawn by William Cooper). Plain Dealing Elementary and Plain Dealing High School are the only schools within the proposed black-majority district in the northern portion of the parish under the NAACP plan (or similar alternative districts drawn by Cooper). Indeed, the two Plain Dealing schools are the only two schools north of Benton in the Bossier Parish school system.

143. During the 1992 redistricting process for the Bossier Parish School Board, black citizens offered an alternative redistricting plan which created two black-majority districts, one in the northern part of the parish, and one within Bossier City. This plan, the "NAACP Plan," demonstrates that, using Census blocks, two contiguous districts with a black voting age population majority can be drawn within Bossier Parish for the Bossier Parish School Board.

144. The NAACP Plan employs the same types of physical and artificial features as in the School Board's plan: roads, streams, railroads, corporate limits, and, within Bossier City, the limits of Barksdale Air Force Base. The NAACP Plan uses streams to a greater extent than the School Board Plan; the district boundaries correlate with streams in at least 14 locations, as opposed to only 6 in the School Board

Plan. Overall, in the use of logical, traditional features such as roads, streams, etc., as boundary markers, the NAACP Plan is not significantly different from the School Board plan.

145. Census blocks are certainly irregular and varied in shape within Bossier Parish.

146. Curves in the NAACP Plan District 2 lines occur immediately north of Plain Dealing, within the Bodcau Wildlife Management Area in the east central part of the parish, and in the areas immediately north and east of the Black Bayou Reservoir. All of these district curves represent boundaries which follow local stream patterns and rural roads. Irregularly shaped Census blocks (and therefore irregularly shaped district boundaries) are more likely to occur in rural parishes within hilly terrain, such as Bossier Parish, than in relatively flat areas such as in the southwestern part of Louisiana.

147. After the School Board adopted its proposed plan, defendant-intervenors' expert, William Cooper, drew other plans containing two black-majority districts, one in the northern part of the parish and one within Bossier City. Maps and descriptions of these plans are included as exhibits to the direct testimony of William Cooper. These plans include one drawn for the recent *Knight v. McKeithen* litigation (Cooper, Exh. 1); and one drawn with a view toward maximizing compactness (Cooper, Exh. 3). Both these plans, particularly the latter, also demonstrate that, using Census blocks, two contiguous black-majority districts can be drawn within Bossier Parish for the Bossier Parish School Board. Both plans comply with the principles of one person, one vote, fairly reflecting minority voting strength, and contiguity.

148. The northern parish minority district in the Cooper Plan, District 8, is similar in shape and location to District 2 of the NAACP Plan, but is less elongated and more compact. The two are sufficiently similar so that the possibility of creating a district like the Cooper District 8 was readily discernible. However, Cooper District 8 is shorter and more compact.

149. District 4 in the 1991 Police Jury Plan (the Proposed School Board Plan) is similar to District 8 shown in Exhibits 1 and 3 to the direct testimony of William Cooper, to the extent that both are large districts centered in the north-central portion of the parish. District 4 in the Proposed School Board Plan has a land area of 424 square miles, 49.6 percent of the entire Bossier Parish area. District 8C in Exhibit 3 has a land area of 252 square miles, 29.5 percent of the entire parish area. District 4 in the Proposed School board Plan is 33.5 miles long from the extreme northwest to the extreme southeast. District 8C from Exhibit 3 is 34.5 miles long from the extreme northwest to the extreme southeast. Thus, each alternative minority district for northern Bossier Parish shown in Exhibits 1 and 3 is virtually identical in length to the School Board's proposed district configuration and covers 40 percent less land area.

150. The minority district configuration within Bossier City used by Cooper is an acceptable configuration from the standpoint of district shape.

151. Using the current precinct lines in Bossier Parish in place at the time of the 1992 School Board redistricting, the NAACP Plan creates 46 precinct splits, and the Cooper Plan causes 27. Using the 1990

precinct lines in existence at the time of the 1990-1991 Police Jury redistricting, the NAACP Plan causes 22 precinct splits, and the Cooper Plan causes 25.

152. It is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines.

History of Black Electoral Success in Bossier Parish after 1980

153. No black candidate ever has been elected to the Bossier Parish School Board. Since 1980, black candidates have run for election to the School Board on four occasions.

154. In the October 17, 1981 primary election for School Board District C (28.1 percent black in total population based upon the 1980 Census), black candidate Floyd Coleman received 389 votes (38.5 percent), white candidate Annie Johnston received 401 votes (39.7 percent), white candidate Ken Larsen received 150 votes (14.8 percent) and white candidate Nonnie Moak received 71 votes (7.0 percent). Coleman was defeated in the November 28, 1981 runoff election, in which he received 584 votes (40.5 percent) and his white opponent, Annie B. Johnston, was elected with 858 votes (59.5 percent).

155. In the September 27, 1986 election for School Board District J (30.1 percent black in total population based upon the 1990 Census), black candidate Jeff Darby was defeated. Darby received 343 votes (45.7 percent) and his white opponent, Ruth Sullivan (who was the incumbent) was elected with 408 votes (54.3 percent).

156. In the October 6, 1990 election for School Board District J (30.1 percent black in total population based upon the 1990 Census), black candidate Johnny Gipson was defeated. Gipson received 430 votes (46.8 percent) and his white opponent, Ruth Sullivan (who was the incumbent), was reelected with 489 votes (53.2 percent), a difference of 59 votes. District J has a white majority and consists of two precincts.

157. In the April 3, 1993 special election for School Board District K (11.3 percent black in total population based upon the 1990 Census), a black candidate, Jerome Blunt (who was the appointed incumbent), was defeated. Blunt received 93 votes (23.9 percent) and his white opponent, Juanita Jackson, was elected with 296 votes (76.1 percent).

158. Since 1980, black candidates also have sought election to the Bossier Parish Police Jury; only one black candidate has been elected to the Bossier Parish Police Jury since 1980.

159. In the October 22, 1983 election for Police Jury District 7 (29.3 percent black in total population based on the 1980 Census), black candidate James Abrams received 358 votes (22.1 percent), white candidate Jerry Baker received 385 votes (23.8 percent) and white candidate Pete Glorioso won with 875 votes (54.1 percent).

160. In the October 22, 1983 election for Police Jury District 10, black candidate Jerome Darby received 407 votes (33 percent), black candidate Johnny Gipson received 260 votes (21 percent), and white candidate Tom McDaniel received 568 votes (46 percent). Darby prevailed in the November 19, 1983

runoff election with 328 votes (53.2 percent) to McDaniel's 289 votes (46.8 percent).

161. In 1983, Police Jury District 10 was 37.9 percent black in total population based upon the 1980 Census, and consisted of two precincts: 2-15 and 2-16. Precinct 2-15 included Barksdale Air Force Base and population areas adjacent to the base; precinct 2-16 also was comprised of population areas adjacent to the base.

162. Many of the residents in and around Barksdale Air Force Base are military population who do not vote. Police Jurors have testified that, as a result, the proportion of actual voters on election day in District 10 who are black is closer to 45 percent, and may even be a majority.[3] As a further result of the inclusion of the military base area in District 10, many of the white voters in that district are from areas outside Bossier Parish and outside Louisiana. According to police jurors, because of that area's distinctive character, black community leaders "have a good chance" of being elected in the district. The circumstances described above are unique to this area

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[3] According to the 1990 Census, the total population of Precinct 2-15 (in 1990) is 5,440; the total voting age population of the precinct is 3,703, of whom 61 percent were non-Hispanic white and 32 percent were non-Hispanic black. The Census block that comprised the Air Force Base portion of the precinct in 1990 contained a total population of 3,327, of whom 75 percent were non-Hispanic white and 22 percent were non-Hispanic black. If that Census block is removed from the precinct, the total voting age population is 1,447, of whom 46 percent are non-Hispanic white and nearly 50 percent non-Hispanic black. As of April 29, 1989, there were 1,229 registered voters in Precinct 2-15, of whom 55 percent were white and 44 percent were black.

of the parish and therefore to districts that include this area.

163. According to the plaintiff's expert, most of the Air Force base personnel do not vote in Bossier Parish. Out of approximately 6,000 military personnel and dependents, it is not unusual to have only 100 or so votes cast in a local election. In effect, Darby's local neighborhood is electing the Police Juror for that district; in that sense, the district is a "stealth district," according to Joiner. Many military retirees also settle permanently in this area. The bulk of these retirees are not from Bossier Parish originally, and thus would tend on average to vote in a less polarized way.

164. In the October 24, 1987 primary election for Police Jury District 10, the black incumbent, Jerome Darby, was reelected with 506 votes (60.5 percent). Another black candidate, Johnny Gipson, received 146 votes (17.4 percent) and the white candidate, Tom McDaniel, received 185 votes (22.1 percent).

165. In the only election held to date under the 1991 redistricting plan from the Police Jury (on October 19, 1991), black incumbent Jerome Darby was reelected without opposition.

166. In the October 19, 1991 election for Police Jury District 7 (43.87 percent black in total population according to the 1990 Census), the white incumbent, Pete Glorioso was reelected with 1,099 votes (64.5 percent). His black opponent, Leonard Kelly, received 604 votes (35.5 percent).

167. Black candidates experienced limited success in municipal election contests against white opponents in Bossier Parish during the 1980s. In two instances in which a black candidate was elected to municipal office in the 1980s, however, he was unsuccessful in seeking reelection in the 1990s.

168. Bossier City, which includes more than half the population of Bossier Parish, is the largest municipality wholly contained in the parish. According to the 1990 Census, Bossier City had a total population of 52,721 of whom 40,895 (77.57 percent) were non-Hispanic white persons and 9,463 (17.95 percent) were non-Hispanic black persons.

169. In the March 30, 1985 election for Bossier City Council District 3 (17 percent black in total population based on the 1990 Census), black candidate Odis Easter was defeated with 214 votes (17.2 percent) to white candidate Wanda Bennett's 1,033 votes (82.8 percent).

170. In the April 1, 1989 election for Bossier City Councilman at Large (two positions), black candidate Don Rushing came in last with 2,222 votes (11.84 percent) against three white candidates.

171. In the April 1, 1989 election for Bossier City Council District 4 (18.9 percent black in total population based on the 1990 Census), black candidate Earl Smith came in last with 137 votes (7.4 percent) against two white candidates.

172. In the April 1, 1989 election for Bossier City Council District 2 (25.6 percent black in total population based on the 1990 Census), black candidate Jeff Darby advanced to the runoff after receiving 356 votes (33.27 percent) against two white candidates. In the April 29, 1989 runoff, Darby was elected with 631 votes (51.47 percent) against his white opponent, Donald Brown, who received 595 votes (48.5 percent).

At the time of the election, District 2 was similar in configuration to Police Jury District 10 and included Barksdale Air Force Base and adjacent population.

173. In the October 16, 1993 special election for Bossier City Council District 2 (which was reduced to 24.3 percent black in total population under the 1993 redistricting plan), black incumbent Jeff Darby was defeated with 416 votes (46.7 percent) to 474 votes (53.3 percent) received by his white opponent, Jim Sawyer. Under the 1993 plan, much of the Barksdale Air Force Base area was removed from the district.

174. Black candidates also have run against white candidates from municipal office in Haughton. According to the 1980 Census, Haughton had a total population of 1,510 of whom 1,034 (68.48%) were non-Hispanic white persons and 456 (30.20%) were non-Hispanic black persons. In Haughton, elections for the Board of Aldermen are at large, in which five seats are to be filled and each voter has five votes to cast.

175. The April 7, 1984 Haughton Alderman election featured 11 candidates, three of whom were black. Black candidate James Bell, who received the highest number of votes (396), was elected along with two white candidates, Conrad Isom and Shirley Stephens, who received 357 and 341 votes, respectively. Black candidate Cashie Cole, Jr., who received 237 votes, was forced into a run-off with three white candidates—John D. Garland, Jr. (213 votes), Billy Joe Maxey (230) votes) and M.H. Walker, Jr. (228 votes). The third black candidate, Johnny Ruffin, who received 211 votes, did not receive enough votes to advance to the runoff.

176. In the May 5, 1984 runoff election for Haughton Alderman, Cashie Cole Jr. was elected with 236 votes, but he subsequently lost his bid for reelection. In October 1992, he finished sixth out of a field of seven candidates with only 13.9 percent of the votes cast.

177. In the October 1991 election for Haughton Mayor, black candidate Mark Hill placed last with 67 votes (10.8 percent). White candidate George J. Hunter received 97 votes (15.6 percent) and the white incumbent, Cecil L. Blackstock, was reelected with 458 votes (73.6 percent).

178. According to the 1990 Census, the Town of Benton had a total population of 2,047 of whom 1,166 (56.96 percent) were non-Hispanic white persons, 84[illegible] (41.33 percent) were non-Hispanic black persons and 35 (1.71 percent) were other minorities.

170. In the March 10, 1992 election for Mayor of Benton, black Candidate Thelma Harry received 218 votes (36.2 percent), white candidate Joe Stickell was elected with 378 votes (62.8 percent) and another white candidate, Ronny P. Vaughn, received 6 votes (1.0 percent).

180. Black candidates have won elections in Bossier Parish from majority-white districts.

Racially Polarized Voting Patterns

181. Police Juror Burford's understanding in 1991 was that at least 80 percent of black and white voters voted from candidates of their own race, and that the crossover rate, *i.e.*, voting for candidates of the other race, was generally 20 percent although sometimes it could be even lower. To some extent, voting patterns in Bossier Parish are affected by racial preferences.

182. As one element of proof of the existence of racially polarized voting in Bossier Parish, the United States presented the analysis and testimony of Dr. Richard Engstrom. Dr. Engstrom is a professor of political science at the University of New Orleans with extensive experience in the statistical analysis of electoral behavior. Dr. Engstrom has been recognized as an expert witness in this field in numerous vote dilution cases in federal courts and has served as court-appointed expert in this regard.

183. Dr. Engstrom's analysis covered the only parish-wide election for local office in recent years (1988 primary election for a seat on the 26th Judicial District Court), as well as the last three elections for seats on the Bossier Parish School Board in which voters in the respective districts were presented with a choice between black and white candidates (1986, 1990 and 1993). In addition, he examined the vote in the six other elections in the parish during the 1990s in which voters were presented with a choice between black and white candidates. Dr. Engstrom's analysis sought to determine the extent to which black voters supported black candidates and the extent to which white voters supported white candidates.

184. Bivariate ecological regression analysis is based upon the correlation between the proportion of the votes received in each precinct and the proportion of black or white voters in each such precinct. Based upon his analysis of the 1988 primary election for the seat on the 26th Judicial District Court, Dr. Engstrom found that there was a very consistent relationship between the percentage of those signing in to vote who were black in each precinct and the percentage of the votes received by the black candidate,

Bobby Stromile, in the precincts. The estimate of support for Stromile among black voters was 79.2 percent, while the estimate of support for Stromile among white voters was only 28.9 percent.

185. Homogeneous precinct analysis simply tabulates the votes cast in precincts with overwhelmingly black and overwhelmingly white populations. These analyses support the estimates produced by ecological regression analysis. In the 1988 primary election, over 90 percent of the people signing in to vote were white in 25 of the 43 precincts in Bossier Parish. Stromile received only 31.3 percent of the votes cast in those 25 precincts, while his white opponent received 69.9 percent of the vote in those precincts. There were no homogeneous black precincts in the parish (the highest percentage of black voters among those signing in to vote was only 75.1 percent).[4]

186. Dr. Engstrom examined two elections for School Board District J: one in 1986, in which Jeff Darby was the black candidate who competed with one white candidate, and one in 1990, in which Johnny Gipson was the black candidate, who competed against the same white candidate. District J was comprised of only two precincts and thus does not provide sufficient data to perform a regression analysis. Precinct 2-15 was racially mixed and Precinct 2-16 was homogeneously white. In Precinct 2-16, 97.4 percent of those signing in to vote in 1990 where white and 99.2 percent of those registered to vote in September of 1986 were white (sign-in data by race are not available for elections prior to 1988). In both these elec-

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[4] The plaintiff does not dispute the assertions in paragraphs 183 through 185, but maintains that they are irrelevant.

tions, precinct 2-16 supported the white candidate. Gipson received 31. 8 percent of the votes cast in that precinct in 1990 and Darby received 26.6 percent in 1986. Both Gipson and Darby won, however, in Precinct 2-15 in their respective elections. In Precinct 2-15, 48.9 percent of those signing in to vote in 1990 were black and 48.9 percent of those registered to vote in September 1986 were black. Gipson received 73.5 percent of the votes cast in Precinct 2-15 in 1990 and Darby received 75.9 percent of the votes cast in that precinct in 1986. The contrast in candidate support as between these two precincts suggests that the black candidates were the choice of the black voters in these elections, but were not the choice of the white voters.

187. In the 1993 special election for School Board District K (11.3 percent black according to the 1990 Census), in which the appointed black incumbent, Jerome Blunt, was defeated by a white opponent, only nine of the 430 people who signed in to vote were black. Even if every vote Blunt received had been cast by a white voter and every black voter who signed in to vote had cast a ballot for Blunt's opponent, Blunt still would have received only 37.1 percent of the white votes in the election. While it is not possible to determine whether Blunt was the choice of black voters, he clearly was not the choice of white voters.

188. Dr. Engstrom also examined the vote in police jury and municipal elections during the 1990s in which voters were presented with a choice between black and white candidates.

189. In the 1991 election for Police Jury District 7, a black candidate, Leonard Kelly, was defeated by the white incumbent, who received 64.5 percent of the

vote. A regression analysis of the five precincts produced an estimated black vote for Kelly of 41.5 percent and a white vote of 33.8 percent. Only two precincts were racially homogeneous and both were white. He received 38.3 percent of the votes in those precincts. Thus, Kelly was not the choice of either black or white voters.

190. In the 1993 Bossier City special election, Jeff Darby, the black incumbent in District 2, faced one white opponent and black candidate Will Jones ran in District 1 against two white opponents. This was the first election held under the new 1993 redistricting plan for the Bossier City Council. The election was delayed until October 16, 1993 because the new redistricting plan had not been precleared in time for the regularly scheduled April 6, 1993 election. Turnout was extremely low in these two districts. Fewer than 25 percent of the eligible registered voters cast ballots in the District 2 contest and approximately 29 percent of the eligible voters in District 1 signed in to vote in the election.

191. Bossier City Council District 2 is comprised of three whole precincts and portions of four others. Based upon Dr. Engstrom's regression analysis, Darby is estimated to have received 61.0 percent of the votes cast by blacks and 41.3 percent of the votes cast by whites. The correlation coefficient for the relationship between the percentage of the votes received by Darby and the racial composition of the precincts in District 2 is .549. This coefficient, based on only seven precincts, is not statistically significant. In the homogeneous white precincts, Darby received 45.7 percent of the votes cast.

192. All five of the precincts in Bossier City District 1 were homogeneously white. The percentage of people signing in to vote in these precincts who were black ranged from 2.3 to 8.2. Although it is not possible to determine whether the black candidate was the choice of black voters, it is clear that he was not the choice of white voters, having received only 10.1 percent of the votes cast in this election.

193. In the 1992 mayoral election for the Town of Benton, blacks comprised 38.3 percent of the people signing in to vote and the black candidate, Thelma Harry, received 36.2 percent of the votes cast. Because the votes were cast in a single precinct, it is not possible to product estimates of the votes by race.

194. In 1992, Cashie Cole, Jr., a black incumbent on the Haughton Board of Aldermen, was defeated in his bid for reelection. All of the votes cast in the election were cast in a single precinct so that no estimates of the votes by race can be produced. Blacks comprised 25.6 percent of the people signing in to vote and Cole finished sixth in a field of sever candidates, with 13.9 percent of the votes cast in this at-large election.

195. In the 1991 mayoral election in Haughton, also held in the one precinct, 25.4 percent of those signing in to vote were black and the black candidate, Mark Hill, finished last among the three candidates, with only 10.8 percent of the votes cast.

196. Of the 14 elections since 1980 in which black candidates have run against white candidates for a single-member district or for mayor, only two candidates have won. Jerome Darby defeated a white opponent on two occasions in Police Jury District 10, which included population in and around Barksdale

Air Force Base, and Jeff Darby defeated white candidates in Bossier City District 2, which also included population in and around Barksdale Air Force Base in 1989, but lost his bid for reelection after much of that population was removed from the district in 1993.

Relationship Between Depressed Levels of Socioeconomic Status and Political Participation Among Black Citizens of Bossier Parish

197. According to pre-election statistics for the April 3, 1993 election prepared by the Department of Elections and Registration, the total number of registered voters in Bossier Parish was 40,356 of whom 33,755 (83.6 percent) were white and 6,279 (15.6 percent) were black. Thus, as of the April 3, 1993 election, 70.1 percent of the 1990 Census white voting age population were registered to vote, while only 58.5 percent of the 1990 Census black voting age population were registered to vote. Current voter registration statistics reveal similar disparities. As of October 28, 1994, Bossier Parish had 38,870 registered voters, of whom 32,474 (83.5 percent) were white and 6,044 (15.5 percent) were black. Thus, 67.5 percent of the white voting age population were registered to vote, while only 56.3 percent of the black voting age population were registered to vote.

198. Turnout statistics prepared by the Department of Elections and Registration also reveal a pattern of lower turnout rates among black voters than among white voters in Bossier Parish.

199. Education, income, housing and employment are considered standard measures of socioeconomic status. These factors repeatedly have been found to translate into political efficacy.

200. Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts. This lower socioeconomic status is traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens.

201. According to the 1990 Census, the per capita income of whites in Bossier Parish in 1989 was $12,966, while the per capita income of blacks in Bossier Parish in 1989 was $5,260.

202. According to the 1990 Census, the proportion of white families in Bossier Parish below the poverty level in 1989 was 6.8 percent, and the proportion of black families in Bossier Parish below the poverty level in 1989 was 40.2 percent.

203. According to the 1990 Census, the proportion of white persons in Bossier Parish below the poverty level in 1989 was 8.7 percent, and the proportion of black persons in Bossier Parish below the poverty level in 1989 was 42.7 percent.

204. According to the 1990 Census, 4.8 percent of white persons in Bossier Parish 25 years of age and older had less than ninth grade education, and 22.8 percent of black persons 25 years of age and older had less than a ninth grade education.

205. According to the 1990 Census, the proportion of white persons in Bossier Parish 25 years old and over who were at least high school graduates (including equivalency) was 83.3 percent, and the proportion of black persons in Bossier Parish 25 years old and over who were at least high school graduates (including equivalency) was 58.7 percent.

206. According to the 1990 Census, the proportion of white persons in Bossier Parish 25 years old and

over who had a least four years of college was 17.0 percent, and the proportion of black persons in Bossier Parish 25 years old and over who had at least four years of college was 8.1 percent.

207. According to the 1990 Census, the proportion of white persons in the labor force of Bossier Parish who were unemployed was 2.9 percent, and the proportion of black persons in the labor force of Bossier Parish who were unemployed was 9.1 percent.

208. According to the 1990 Census, 4.2 percent of the housing units in Bossier Parish occupied by white persons had no vehicle available, and 25.9 percent of the housing units occupied by black persons in Bossier Parish had no vehicle available.

209. According to the Census, the proportion of occupied housing units in Bossier Parish owned by their occupants was 70.6 percent among white persons and 49.4 percent among blacks.

210. According to the 1990 Census, 0.3 percent of owner-occupied housing units in Bossier Parish with a white householder lacked complete plumbing for exclusive use, whereas 7.2 percent of owner-occupied housing units with a black householder lacked such facilities. The percentage of black households without access to vehicles (25.9%) is over six times higher than the comparable percentage (4.2%) for white households.

211. According to the 1990 Census for Bossier Parish, the poverty rate for black persons (44.7%) is nearly five times the rate for white persons (9.1%). The per capita income of black persons ($5,260) is only 40 percent of that enjoyed by whites ($12,966). The

unemployment rate for black persons aged 16 and over (22.4%) is nearly four times that for whites.

212. According to the 1990 Census for Bossier Parish, the socioeconomic disparities are matched by similarly severe disparities in education. The percentage of black persons over 25 without a high school degree (40.6%) is over twice the comparable rate (16.7%) for whites.

213. The depressed socioeconomic and educational levels of black persons within Bossier Parish, coupled with their limited access to vehicular transportation, makes it harder for blacks to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for black persons within Bossier Parish.

History of Official Racial Discrimination

214. Slavery was sanctioned by law in Louisiana prior to the ratification of the Thirteenth Amendment and vestiges of discrimination persist which affect the rights of black persons to register, to vote or otherwise participate in the democratic process.

215. In 1896, 126,849 black persons and 153,174 white persons were registered to vote in Louisiana, according to the 1902 Report of the Secretary of State of Louisiana.

216. In 1896, the Louisiana legislature adopted two new laws designed to disenfranchise black voters. One law provided a complex new Australian ballot and prohibited election officials from assisting illiterates. The other required all voters to reregister using a complex application from, prohibited explanation of application questions, and facilitated wholesale

purges by either registrars or party officials of individual voters who managed to register successfully. Discriminatory application of the new laws reduced black registration by 90 percent, leaving only 10 percent of adult black males on the rolls. J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, Ct., Yale University Press, 1974), 160-63.

217. The State of Louisiana's Constitutional Convention of 1898 imposed a "grandfather" clause as well as educational and property qualifications for voter registration which were designed to limit black political participation.

218. Implementation of the disfranchising devices in the 1898 constitution reduced blacks to about 4 percent of the state's registered voters, although they made up approximately half the state's population. *United States v. State of Louisiana*, 225 F. Supp. 353, 373 (E.D. La. 1963). *See generally*, Richard Engstrom, *et al.*, *Louisiana*, in *Quiet Revolution in the South* 103-135 (Chandler Davidson and Bernard Grofman, eds., 1994).

219. On March 17, 1900, 5,320 black persons and 125,438 white persons were registered to vote in Louisiana, according to the 1902 Report of the Secretary of State of Louisiana.

220. In 1921, the state Democratic Party established, pursuant to state law, an all-white primary which was used until 1944.

221. In 1921, the state amended its constitution and replaced the "grandfather" clause with a requirement that an applicant "give a reasonable interpretation" of

any section of the federal or state constitution. The United States Supreme Court in *Louisiana v. United States*, 380 U.S. 145 (1965), held this "interpretation" test to be one facet of the state's successful plan to disenfranchise its black citizens.

222. Following the invalidation of the all-white primary in 1944, the state adopted such electoral devices as citizenship tests, anti-single-shot laws, and a majority vote requirement for party officers. *Major v. Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983).

223. Following the decision of the U.S. Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), outlawing segregation in public schools, the Louisiana legislature in 1954 established a joint committee chaired by State Senator Willie Rainach. Popularly known as the "Segregation Committee," the committee's stated purposed was "to provide ways and means whereby our existing social order shall be preserved," in order "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions, and laws of our State." *United States v. State of Louisiana*, 225 F. Supp. 353, 378 (E.D. La. 1963).

224. Senator Rainach was among the founders of the Louisiana Association of Citizens' Councils, which published in 1956 a pamphlet entitled "Voter Qualification Laws in Louisiana—The Key to Victory in the Segregation Struggle." In the pamphlet the organization urged its members to initiate a purge campaign to challenge the right to vote of "the great numbers of unqualified voters who have been illegally registered," and who, according to the pamphlet, "invariably vote in blocks and constitute a menace to the community." The pamphlet's subtitle

was: "A Manual of Procedure for Registrars of Voters, Police Jurors and Citizens Councils." The state government distributed the pamphlet to parish registrars with instructions to follow its guidelines as closely as possible. *United States v. State of Louisiana*, 225 F. Supp. 353, 378 (E.D. La. 1963).[5]

225. Published congressional hearings on the Voting Rights Act included quantitative evidence concerning racial discrimination in voter registration in Louisiana, drawn from the various federal court cases filed by the Department of Justice. In addition, the hearings reproduced evidence of racial disparities in educational expenditures by the state over several decades together with documentation that these disparities were a product of the state's official policy of racial discrimination in education. *Hearings Before the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, First Session . . . Part 2* (Washington, D.C., G.P.O., 1965), 1103-59, 1189, 1191-92, 1199-1201, 1208-10, 1220-21, 1224-26, 1229-34, 1250-52, 1263-70, 1280-81, 1412-41, 1447-55, 1479-84. Congress and the federal courts have concluded that such educational disadvantages, typically correlated with disparities in socioeconomic status, tend to depress voter registration and turnout, as well as other forms of political participation. S. Rep. No. 97-417, at 29, citing *White v. Regester*, 412 U.S. 755, 768 (1973), and *Kirksey v. Board of Supervisors*, 554 F.2d 139, 145 (5th Cir. 1977) (en banc).

226. In 1954, the year before adoption of the Voting Rights Act, 14 percent of the nonwhite voting-age

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[5] The plaintiff does not dispute the assertions in paragraphs 214 through 223, but maintains that they are irrelevant.

population in Louisiana was registered to vote, yet 86 percent of the white voting-age population was on the registration rolls. United States Commission on Civil Rights, *Political Participation* (Washington, D.C., G.P.O., 1968), 242-43. This disparity was the result of a series of discriminatory election laws, according to the United States Supreme Court, which enjoined further use of the state's requirement that prospective voters demonstrate to the satisfaction of local registrars that they could understand or interpret a passage from the state or federal constitutions. *Louisiana v. United States*, 380 U.S. 145, 147-51 (1965). This registration test, like its predecessors, was racially neutral on its face but had been administered in a racially discriminatory manner. *Id.* at 150, 153.

227. The State of Louisiana and its subjurisdictions, including Bossier Parish, are subject to the preclearance provision (Section 5) of the Voting Rights Act of 1965 because in 1965 the state employed a "test or device," as defined in the Act, as a prerequisite to register to vote and less than 50 percent of the state's voting age population (at the time, 21 years of age or older) voted in the 1964 presidential election.

228. Since 1965, the United States Attorney General has designated twelve Louisiana parishes, including Bossier Parish, which was designated on March 23, 1967, for the appointment of federal examiners pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. section 1973d.

229. In 1968, Louisiana altered its policy prohibiting the use of at-large elections for parish police juries and school boards by the adoption of two statutes enabling both types of local governing bodies to

use parish-wide elections rather than realign their single-member districts. The state was required by the decision of the U.S. Supreme Court in *Allen v. State Board of Elections*, 393 U.S. 544 (1969), to submit these changes for review by the Department of Justice pursuant to Section 5 of the Voting Rights Act. On June 26, 1969, the Attorney General objected under Section 5 to the two state enabling acts on the grounds that at-large elections would in many instances, if implemented, "have the effect of discriminating against Negro voters on account of their race." See objection letter of June 26, 1969, objecting to Acts 445 and 561 of 1968, and the discussion in *Zimmer v. McKeithen*, 485 F.2d 1297, 1301-02 n.7 (5th Cir. 1973) (en banc).

230. In 1971, the legislature incorporated multi-member districts in the Shreveport metropolitan areas, including Bossier Parish, and in other areas, into its redistricting plans for both state senate and house. The Attorney General objected under Section 5 of the Voting Rights Act, citing both the dilution caused by multi-member districting and the fragmentation of black voting strength in each area. The U.S. District Court hearing a constitutional challenge to the state's redistricting plan observed that had the Attorney General not objected, he would have found the districting plan unconstitutional because it was malapportioned, diluted minority voting strength, and employed "gerrymandering in its grossest form." *Bussie v. Governor of Louisiana*, 333 F. Supp. 452, 454 (E.D. La. 1971). The court ordered legislative elections to be held under its own interim plan, relying exclusively on single-member districts.

231. A U.S. Commission on Civil Rights publication, *The Voting Rights Act: Ten Years After* (Washington, D.C., 1975), listed 12 parishes, including Bossier Parish, in which minority plaintiffs filed lawsuits challenging police jury and school board redistricting plans enacted in the 1970s.

232. The Department of Justice objected to the 1991 redistricting plans for the Louisiana state house, in part, because the Justice Department determined that the district alignments appeared to minimize black voting strength in and around Bossier Parish.

233. Public accommodations and facilities in the State of Louisiana were not open to members of both races until the late 1960s.

234. The State of Louisiana maintain a dual university system until at least 1981.

235. After 1954, school boards in Louisiana failed to abolish *de jure* segregation in the public schools voluntarily, and it was necessary to for local federal courts to issue decrees in order to obtain compliance with federal law.

236. The Bossier Parish School Board is the defendant in *Lemon v. Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.), in which it was found liable for intentionally segregating the public schools of Bossier Parish in violation of the Fourteenth Amendment to the United States Constitution. *Lemon v. Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965).

237. The Bossier Parish School Board for years sought to limit or evade its desegregation obligations. The School Board sought to assign black children of

Barksdale Air Force Base personnel to black schools without a right to transfer to white schools, claiming that they were "federal children" and not within the "jurisdiction" of the school district. Judge Wisdom rejected the School Board's "new and bizarre excuse for rationalizing [its] denial of the constitutional right of Negro school children to equal educational opportunities as white children." *Bossier Parish School Board v. Lemon*, 370 F.2d 847, 849 (5th Cir. 1967).

238. The Fifth Circuit also rejected the school district's subsequent attempt to implement a "freedom of choice plan," *Hall v. St. Helena Parish School Board*, 417 F.2d 801 (5th Cir. 1969), and after "protracted litigation" subsequently rejected yet another inadequate remedial plan proposed by the district. *Lemon v. Bossier Parish School Board*, 421 F.2d 121 (5th Cir. 1970). The School Board then attempted to assign students to one of two schools in Plain Dealing based on their success on the California Achievement Test. The Fifth Circuit rejected this effort as well. *Lemon v. Bossier Parish School Board*, 444 F.2d 1400 (5th Cir. 1971).

239. In 1979, the School Board filed a motion seeking a declaration of unitary status and release from further court supervision. The motion was denied.

240. Notwithstanding the requirements of the order in *Lemon* concerning the desegregation of its faculty and staff, since 1980, the School Board has assigned an increasingly disproportionate number of black faculty to schools with predominantly black student enrollments and has reduced the percentage of black teachers in the school district from 14 percent to less than 10 percent. As of March 1994, while

fewer than 10 percent of the district's teachers were black, the School Board assigned faculties that were more than 20 percent black to the five predominantly black schools in the district. The School Board assigned a faculty that was more than 70 percent black to one school, Butler Elementary. The School Board assigned more than half of its 113 black teachers to seven of its 28 schools and one or fewer black teachers to ten of its schools.

241. Since, 1980, despite the Bossier Parish School Board's affirmative duty to desegregate, the number of elementary schools with predominantly black student enrollments has increased from one to four.

242. As of the 1993-94 school year, the Bossier Parish School Board assigned predominantly black student enrollments to five of its 27 regular schools. Despite the fact that the overall racial composition of the school district's student population is 29 percent black, four of these schools have student bodies that are more than 70 percent black.

243. As of the 1993-94 school year, the School Board also maintained six schools in which the white enrollment was greater than 80 percent, and two schools in which the white enrollment is greater than 90 percent. Of the 16 regular elementary schools, four had predominantly black student enrollments and five had student enrollments that were more than 80 percent white.

244. Blacks and whites today are treated identically by public officials in registering to vote, filing for public office and voting in primaries and general elections. No black individual or black person representing a black organization has been denied the right

to speak to the Bossier Parish School Board at its pubic meetings.

245. No black in the past two decades has filed a suit or an official protest alleging that his right to register to vote, file for public office, or to vote in a primary or general election has been hampered or interfered with.[6]

246. On July 26, 1991, Gary W. Moore, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which Moore pled guilty, Moore willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreveport Times*, *Meridian Star*; see also, May 30, 1991. *Shreveport Times*.

247. On July 26, 1991, Herbert D. Haynes, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which Haynes pled guilty, Haynes willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreve-*

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[6] The defendant and defendant-intervenors do not dispute this assertion, but maintain that it is irrelevant.

port Times, *Meridian Star*; see also, May 30, 1991, *Shreveport Times*.

248. On July 12, 1991, Edward Wayne McGee, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which McGee pled guilty, McGee willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreveport Times*; July 28, 1991, *Meridian Star*; see also, May 30, 1991, *Shreveport Times*.[7]

CONCLUSIONS OF LAW

249. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, prohibits a covered jurisdiction like the Bossier Parish School Board from implementing any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" unless and until it has proven to either this Court or the Attorney General that the voting change at issue "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

250. In an action for a declaratory judgment under Section 5, the burden of proof is on the plaintiff. *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

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[7] The plaintiff does not dispute the assertions in paragraphs 245 through 247, but maintains that they are irrelevant.

251. To sustain that burden, the Bossier Parish School Board must demonstrate the absence of both discriminatory purpose and discriminatory effect in the adopting and maintenance of its 1992 redistricting plan. *City of Rome v. United States*, 446 U.S. 156, 172 (1980); *City of Richmond v. United States*, 422 U.S. 358, 378-379 (1975). In addition, the plan may not be precleared pursuant to Section 5 if implementation of the plan will result in a violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973.

252. The 1992 redistricting plan is not retrogressive to minority voting strength compared to the existing benchmark plan and therefore will not have a discriminatory effect, as that term has been construed by the Supreme Court in *Beer v. United States*, 425 U.S. 130 (1975). The reductions here are *de minimis*. But this does not end the inquiry. As this Court has recognized, "nonretrogression is not the only test for compliance with the Voting Rights Act." *Busbee v. Smith*, 549 F. Supp. 494, 516 (D.D.C. 1982). Even if a plan increases black voting strength, plaintiff is not entitled to the declaratory judgment unless it can also demonstrate the absence of a racially discriminatory purpose. *Ibid.*

253. The inquiry into whether the plan has a discriminatory purpose requires an examination into any circumstantial or direct evidence of intent that is available. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977); *Rogers v. Lodge*, 458 U.S. 613, 618 (1982). "(I)nvidious discriminatory purpose may often be inferred from the totality of the relevant facts." *Washington v. Davis*, 426 U.S. 229, 242 (1976). Rele-

vant areas of inquiry include: (1) the historical background of the decision; (2) the sequence of events leading up to the action taken; (3) procedural departures from the customary decisional process; (4) substantive departures from the normal process; and (5) the legislative or administrative history, including contemporary statements by the members of governing body, minutes of their meetings, and any testimony by the decision makers regarding their intent. *Village of Arlington Heights v. Metropolitan Housing Development Corp., supra*, 429 U.S. 267-68; see *Garza v. County of Los Angles*, 918 F.2d 763, 771 (9th Cir. 1990). In obtaining a declaratory judgment that the proposed plan is free of any racially discriminatory purpose, the plaintiffs must show the absence of such factors.

254. The impact of the official action on the minority group often provides "an important starting point" to the determination of whether invidious intent is implicated. *Village of Arlington Heights v. Metropolitan Housing Development Corp., supra*, 429 U.S. at 266; *Busbee v. Smith, supra*, 549 F. Supp. at 517 (three-judge court). As Justice Stevens observed in *Washington v. Davis*, "Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds." 426 U.S. at 253 (concurring opinion).

255. The objective of protecting incumbents' opportunities for reelection is a well recognized political reality of the redistricting process and is not *per se* evidence of racial animus. *Rybicki v. State Board of Elections of Illinois*, 574 F. Supp. 1082, 110-11, n.81 (N.D. Ill. 1982). See also *Burns v. Richardson*, 384 U.S. 73, 89, n.16 (1966). But, where, as here, the motive of protecting incumbency necessarily involves the adoption of a plan that denies minority voters an equal opportunity to elect their preferred candidates to the school board, it may be viewed as evidence of racially discriminatory intent. *Ketchum v. Byrne*, 740 F.2d 1389, 1408 (7th Cir. 1984). It has been held in similar circumstances that "the requirements of incumbency are so closely intertwined with the need for racial dilution that an intent to maintain a safe . . . district for [a white incumbent] is virtually coterminous with a purpose to practice racial discrimination." *Rybicki v. State Board of Elections of Illinois, supra*, 574 F. Supp. at 1109. Here, plaintiffs must demonstrate that such incumbency considerations did not prevent the drawing of a minority district.

256. A finding of racially discriminatory purpose does not require a finding of racial hatred or animus. *Garza v. County of Los Angeles, supra*, 918 F.2d at 778 n.1 (Kozinski, J. concurring in relevant part):

> The lay reader might wonder if there can be intentional discrimination without an invidious motive. Indeed there can. A simple example may help illustrate the point. Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief,

you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

257. Section 5 preclearance of the Bossier Parish School Board's redistricting plan also must be denied if the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S. C. 1973. If this Court concludes that the plaintiff has failed to meet its burden of proof on the issue of purpose or effect, preclearance must be denied and there will be no need to decide whether the plan also violates Section 2 of the Act. However, should this Court find that the Bossier Parish School Board has met its burden of proof on the issues of purpose and retrogression, this Court must also determine whether the plan constitutes a violation of Section 2 for which Section 5 preclearance must be denied. See S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n.31 (1982); 28 C.F.R. 51.55(b)(2).

258. Section 2 of the Voting Rights Act prohibits any denial or abridgment of the right to vote on account of face or color. Section 2 provides as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, on in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

> (b) A violation of subsection (a) is established, if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. 1973 ("Section 2"). See also S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982).

259. Absent proof of intentional discrimination, where vote dilution in violation of Section 2 occurs, "a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Thornburg v. Gingles*, 478 U.S. 30, 49 (1986) (emphasis in original). In *Gingles*, which involved a challenge to a multimember district system, the Court enunciated three threshold factors that must be present to prove a vote dilution claim under Section 2: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to

defeat the minority's preferred candidate. 478 U.S. at 49-51. The Supreme Court recently held that these prerequisites also apply to challenges to redistricting plans under Section 2. *Growe v. Emison*, 113 S. Ct. 1075 (1993); *Voinovich v. Quilter*, 113 S. Ct. 1149 (1993).

260. When Congress amended Section 2 it intended courts to take "a 'functional' view of the political process," and to make "a searching practical evaluation of the 'past and present reality.'" *Thornburg v Gingles*, *supra*, 478 U.S. at 45; see also *Gomez v. City of Watsonville*, 863 F.2d 1407, 1413 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989).

261. The purpose of the geographic compactness criterion is to determine whether the challenged election plan is causing the violation. As the Supreme Court explained:

> Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice. The single-member district is generally the appropriate standard against which to measure minority group potential . . . because it is the smallest political unit from which representatives are elected.

Thornburg v. Gingles, *supra*, 478 U.S. at 50, n.17 (emphasis in original). According to the Supreme Court in *Gingles*, the issue is whether there is an alternative to the challenged plan that would provide the minority group with the potential to elect candidates of choice.

262. Voting is racially polarized when racial minority voters vote differently from white voters. *Thornburg v. Gingles*, *Supra*, 478 U.S. at 53 n.21. The Supreme Court explains that "[t]he purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive until and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Thornburg v. Gingles*, *supra*, 478 U.S. at 56. Racially polarized voting is legally significant if minority voters are cohesive in support of their candidates and those candidates are usually defeated by white bloc voting. *Ibid.* The reasons why those racial differences in voting patterns occur are not relevant to the basic polarization inquiry. *Thornburg v. Gingles*, *supra*, 478 U.S. at 61-74; 478 U.S. at 100 (O'Connor, J., concurring).

263. According to the Supreme Court in *Gingles*, the statistical method of ecological regression analysis, used here by the expert witness for the United States, is the standard method for establishing racially polarized voting and in most circumstances it produces valid and reliable estimates of voting behavior for racial groups. See, *e.g.*, *Thornburg v. Gingles*, *supra*, 478 U.S. at 52-53 & n.20; *Campos* v. *City of Baytown*, *supra*; *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496 (5th Cir. 1987); *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1331-1334 (C.D. Cal.), *aff'd*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991). In addition, homogeneous precinct analysis (also known as extreme case analysis) and anecdotal testimony can provide further evidence on the polarization issue. See *Romero v.*

City of Pomona, 883 F.2d 1418 1423; *Garza v. County of Los Angeles*, *supra*, 756 F. Supp. at 1332.

264. The racial polarization inquiry in vote dilution cases should focus on contest between minority candidates and non-minority candidates. A focus on such elections appropriately ties together the two key Senate Report factors: racial polarization and "the extent to which members of the minority group have been elected to public office." S. Rep. No. 97-417, *supra*, at 29 & n.115. In *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496 (5th Cir. 1987), the Fifth Circuit ruled, "implicit in the *Gingles* holding is the notion that black preference is determined from elections which offer the choice of a black candidate." *Id.* at 503. See also *Smith v. Clinton* 687 F. Supp. 1310, 1316-17 (E.D. Ark. 1988), *summarily aff'd*, 488 U.S. 988 (1988) (three-judge court).

265. Generally, where it is available, the best evidence to measure racially polarized voting is the elections conducted for positions within the challenged election system. Analysis of elections outside the challenged system is appropriate, however, if viable minority candidates have been deterred from seeking office. *Cf. Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d, 1201, 1208-1209 n.9 (5th Cir. 1989); *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (5th Cir. 1984); *Garza v. County of Los Angeles*, *supra*, 756 F. Supp. at 1329.

266. After the preconditions have been established, the court must examine the "totality of circumstances" to determine whether minority group members have an equal opportunity to participate in the political process and elect representatives of their choice. *Johnson v. De Grandy*, 114 S. Ct. 2647 (1994).

Typical factors relevant to an inquiry into the totality of the circumstances include, but are not limited to, the following:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority community to register, to vote, or otherwise participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health which hinder their participation in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals; and,

7. the extent to which members of the minority group have been elected to office in the jurisdiction.

S. Rep. 97-417, 97th Cong., 2d Sess. 28-29 (1982). In addition, the Senate Report listed two additional factors that may have some probative value as part of the evidence to establish a violation of Section 2:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting or standard, practice or procedure is tenuous.

S. Rep. 97-417, 97th Cong., 2d Sess. 28-29 (1982). "If present, the[se] other factors . . . are supportive of, but *not essential to*, a minority voter's claim." *Thornburg v. Gingles*, *supra*, 478 U.S. at 48-49 n.15 (emphasis in original). There is no requirement that all, or any particular number of these factors be shown in order to prove a violation of Section 2. Rather, the court should "determine, based 'upon a searching practical evaluation of the 'past and present reality,' . . . whether the political process is equally open to minority voters." *Thornburg v. Gingles*, *supra*, 478 U.S. at 79.

267. A violation of Section 2 also is shown if the evidence demonstrates that the challenged election plan was adopted or has been maintained with a discriminatory purpose. *Garza v. County of Los Angeles*, 918 F.2d 763, 770 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991); see *McMillan v. Escambia County*, 748 F.2d 1037, 1046-47 (5th Cir. 1984); *United States v. Marengo County Commission*, 731 F.2d 1546, 1553 (11th Cir.), *appeal dismissed, cert. denied*,

469 U.S. 976, (1984); *Dillard v. Baldwin County Board of Education*, 686 F. Supp. 1459, 1460, 1467-69 (M.D. Ala. 1988); S. Rep. No. 97-417, 97th Cong., 2d Sess. 27 (1982). Courts since *Thornburg* have continued to analyze intentional discrimination claims independently of the "results" test. *Garza v. County of Los Angeles*, *supra*, 918 F.2d at 766; see also *Overton v. City of Austin*, 871 F.2d 529, 540-541 (5th Cir. 1989); *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1552-1553 (11th Cir. 1987), *cert. denied sub nom. Duncan v. City of Carrollton*, 485 U.S. 936 (1988); and *Brown v. Bd. of Comm'rs of City of Chattanooga*, 722 F. Supp. 380 (E.D. Tenn. 1989). Such proof of intentional discrimination also establishes a violation of the Fourteenth and Fifteenth Amendments. *Rogers v. Lodge*, *supra*, 458 U.S. at 618.

[Original document contains no ¶¶ 268-281.]

282. No redistricting plan can be designed and drawn for the Bossier Parish School Board with one or more black-majority districts without splitting and cutting precincts in violation of Louisiana Revised Statutes, Title 17, Section 71.3. Under Louisiana law, the Bossier Parish Police Jury is the governing authority for Bossier Parish and is vested with the authority and duty of redistricting after each ten year census. Under Louisiana law, the precinct lines it draws may not be cut, split or otherwise violated by the Bossier Parish School Board if the School Board is the same size as the Police Jury. This law is clearly set out in Louisiana Revised Statutes, Title 17, Section 71.3.

283. The majority opinion in *Shaw v. Reno*, ____ U.S. ____, 125 L.Ed.2d 511 (1993), contends that racial

gerrymandering separates the citizens on the basis of race. *Shaw* stands for the legal proposition that a redistricting plan which rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, without sufficient justification, is a violation of the Equal Protection Clause of Fourteenth Amendment to the Constitution of the United States.

284. Vote dilution is meaningful only with respect to a norm to be established; in order to decide whether an electoral system has made it harder for minority voters to elect candidates they prefer, a court must have an idea in mind of how hard it should be for minority voters to elect their preferred candidates under an acceptable system.

285. It is fiction to conclude that only blacks can govern fairly other blacks.

APPENDIX E

[DOJ Logo]

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20035

Office of the Assistant Attorney General

[Aug. 30, 1993]

Mr. W.T. Lewis
Superintendent of Bossier
Parish Schools
P.O. Box 2000
Benton, Louisiana 71006-2000

Dear Mr. Lewis:

This refers to the 1992 redistricting plan and the renaming of districts from letters to numbers for the Bossier Parish School District in Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on June 29, 1993.

The Attorney General does not interpose any objection to the renaming of the districts from letters to numbers. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion with regard to the proposed redistricting plan. We have considered carefully the information you have provided, as well as Census data and information and comments received from other interested parties. According to the 1990 Census, black residents comprise 20.1 percent of the total population in Bossier Parish. The Bossier Parish School District, which is coterminous with the parish, is governed by a twelve member school board elected from single-member districts. Under both the existing and proposed districting plans, not one of the twelve single-member districts is majority black in population. Currently, there are no black members on the school board.

In light of the pattern of racially polarized voting that appears to prevail in parish elections, the proposed plan, adopted by the parish police jury and recommended by the school board's consultant, would appear to provide no opportunity for black voters to elect a candidate of their choice to the school board. We note that under the proposed plan, the school board district with the highest black population percentage, District 4, is 45 percent black. The information provided in your submission indicates that prior to the adoption of the proposed redistricting plan, members of the black community appeared before the school board and requested that the board draw a redistricting plan that would fairly reflect black voting strength in the parish by creating two majority black districts.

We are mindful of the fact that we granted Section 5 preclearance to an identical redistricting plan for the Bossier Parish police jury in July 1991. However, in reviewing the submitted redistricting plan for the

school board, we have taken into account new information, particularly the 1991 police jury elections held under the 1991 redistricting plan and the 1992 redistricting process for the school board. During that process, it appears that an alternative plan that would have provided for two districts which are approximately 62 and 56 percent black in total population was presented to the school board at a public hearing.

Our analysis of this alternative, preferred by members of the black community, shows that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts. Apparently, the school board rejected this plan and engaged in no efforts to accommodate the requests of the black community, instead adopting the redistricting plan adopted by the parish police jury. While the school board is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice.

We have considered the school board's explanation that the proposed plan was adopted in order to avoid voter confusion by having the same districting plans for both school board and police jury elections. In addition, the school board has indicated that the need to avoid split precincts, pursuant to state law, limited its ability to adopt a redistricting plan with majority black districts.

We do not find either of these arguments persuasive. We understand that during the 1980's the school board and police jury used different districting plans as a result of the reapportionment of the respective districts following the 1980 Census and no evidence

has been presented to show that voter confusion resulted. And while we are aware that state law prohibits precinct splits in school board redistricting plans, we also note that state law allows police juries to realign precincts and such a realignment in Bossier Parish could have facilitated the development of a school board redistricting plan with majority black districts. The information that you have provided discloses no evidence that the school board ever sought a precinct realignment that would have allowed the drawing of such a plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia v. United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance must be withheld where a change presents a clear violation of Section 2. 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed redistricting plan meets the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the 1992 school board redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judg-

ment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. *Clark v. Roemer*, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Bossier Parish School District plans to take with respect to this matter. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section.

Sincerely,

/s/ JAMES P. TURNER
JAMES P. TURNER
Acting Assistant
Attorney General
Civil Rights Division

APPENDIX F

[DOJ Logo]

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20035

Office of the Assistant Attorney General

[December 20, 1993]

James M. Bullers, Esq.
District Attorney
26th Judicial District
Bossier-Webster Parishes
P.O. Box 69
Benton, Louisiana 71006

Dear Mr. Lewis:

This refers to your request that the Attorney General reconsider the August 30, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the Bossier Parish School District in Bossier Parish, Louisiana. We received your request on September 7, 1993; supplemental information was received on October 20, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments the school board has advanced in support of the request. According to the 1990 Census, black persons comprise 20.1 percent of Bossier Parish's total population and 17.6 percent of its voting age population. The school board is elected from twelve single-member districts; none of the districts in the 1992 redistricting plan subject to our objection have a black majority. As explained in the August 30, 1993, objection letter, our analysis of your initial submission showed that, given the apparent pattern of racially polarized voting in parish elections, black voters will be unable to elect a candidate of their choice to the school board under the objected-to redistricted plan. Our review of the redistricting process further indicated that the school board made no effort to accommodate the request of black community that the board develop a plan with two black-majority districts and gave no consideration to such a plan developed by the NAACP.

In support of its request for reconsideration, the school board continues to argue that it is impossible to draw a redistricting plan with black-majority districts without splitting precincts in violation of state law. We considered this argument during our prior review and found this explanation unpersuasive. Our objection letter specifically noted that the school board could have, but did not, seek a realignment of voting precincts by the Bossier Parish Police Jury that would have facilitated the development of a plan that fairly reflects black voting strength while addressing these state law concerns. The information made available to us indicates that the school board has not requested that the police jury make any necessary realignment of precincts.

In addition, your letter, citing *Shaw v. Reno*, 113 S. Ct. 2816 (1993), argues that the alternative plan developed by the NAACP is "so irrational on its face that the plan could be understood only as an effort to segregate voters into separate voting districts because of their race." However, the school board pro-

vides no basis in fact nor explanation for this assertion, and our analysis of the plan does not support your conclusion. Moreover, the school board does not appear to dispute the fact that black residents are sufficiently numerous and geographically compact in the parish so that two black-majority districts could be created. You contend only that it is not possible to do so given current precinct configurations, which the school board has not sought to alter. In these circumstances, *Shaw v. Reno* does not provide a legal basis for withdrawing our objection, and the school board's reliance upon that decision appears to be pretextual.

In light of the considerations discussed above, I remain unable to conclude that the Bossier Parish School District has carried its burden of showing the submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia v. United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must decline to withdraw the August 30, 1993, objection to the 1992 redistricting plan for the school board.

As we previously advised, the school board retains the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, we remind you that unless and until a judgment from the District of Columbia Court is obtained, the objection remains in effect and the objected-to change continues to be legally unenforceable. *Clark*

v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.48(d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Bossier Parish School District plans to take concerning this matter. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the voting Section.

Sincerely,

/s/ JAMES P. TURNER
JAMES P. TURNER
Acting Assistant
Attorney General
Civil Rights Division

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), GK, JR)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT,

and

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

[Filed: July 6, 1998]

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 28 U.S.C. 1253 (which provides for appeals directly to the United States Supreme Court from decisions of three-judge courts), 28 U.S.C. 2101(b) and 42 U.S.C. 1973c, defendant Janet Reno hereby appeals to the United States Supreme Court from the final Order of the United States District Court for the District of Columbia (three-judge court) filed on May 1, 1998 and entered on May 4, 1998, granting preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, for the 1992 redistricting plan of plaintiff Bossier Parish School Board.

Respectfully submitted,

WILMA LEWIS
United States Attorney

ANITA HODGKISS
Deputy Assistant
Attorney General

/s/ GAYE L. HUME
ELIZABETH JOHNSON
REBECCA J. WERTZ
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APPENDIX H

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, provides:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section.

Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

APPENDIX I

28 C.F.R. 51.55a (1997)

Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgement on account of race, color, or membership in a language minority group.

Supreme Court, U.S.
FILED
DEC 14 1998
OFFICE OF THE CLERK

No. 98-405, 98-406

In The

Supreme Court of the United States

October Term, 1998

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

**On Appeal From The
United States District Court
For The District Of Columbia**

MOTION TO DISMISS OR AFFIRM

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Appellee moves to dismiss or affirm on the ground that the Court lacks jurisdiction and that the question presented is so insubstantial as not to need further argument.

COUNTERSTATEMENT

Appellants desperately seek to obscure several dispositive factual issues that demonstrate that this Court should not review the validity of the Bossier Parish School Board's redistricting plan. Specifically, in adopting the plan at issue here, the School Board selected the only plan presented to it that conformed to state law, since private appellants' maximization plan (the "NAACP plan") concededly constituted a facial violation of state law and thus was "null and void." J.A. 266.[1] Moreover, the plan that was chosen had already been precleared by the Department of Justice just one year before. Standing alone, these two legitimate interests demonstrate that the School Board did not adopt its redistricting plan with a discriminatory purpose. The election results under this plan underscore this conclusion. There have been two elections conducted pursuant to the plan. In 1994, two black candidates were elected to the School Board, one from a district which was only 26.7% black. J.A. 47; jurisdictional statement of the United States at 5 n.3 ("U.S. J.S."). In 1998, these two black incumbents were reelected without opposition. In this election, a third black candidate ran for office and was elected over a white Republican in a district that is only 21.1% black. J.A. 47. Thus, under the School Board's plan, there are now currently three black members on the School Board. Despite the success of minority candidates running under the plan, appellants seek to have this Court invalidate this plan on the ground that it was discriminatory for the School Board not to have adopted a racially gerrymandered redistricting plan with *two* black-majority districts.

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[1] In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statements in this appeal and to the Joint Appendix ("J.A.") filed in the prior appeal in this case.

In any event, a remand here to require the district court to consider whether it was necessary to adopt appellants' maximization plan would be both counterproductive and futile. As the minority population of Bossier Parish is already represented by three minority members on the School Board, it would be nonsensical to require the School Board to adopt a plan that packs the black population into two octopus-like districts, and thereby diminishes the prospects for electing a third minority member. Moreover, any such effort would be pointless as the next elections for the School Board will not be held until 2002. By that time, new census figures will be available, and the School Board will be required to redistrict prior to its next elections. Thus, the School Board plan will never again be utilized. As we demonstrate below, this incontrovertible fact renders any decision as to the future application of the plan wholly advisory under Article III, as appellants have no legally cognizable interest in enjoining an otherwise moribund law and appellee has no interest in a declaratory judgment relating to a plan it has abandoned.

In light of appellants' gross factual distortions, an extended counter-statement of the case is required.

Bossier Parish is located in northwestern Louisiana and is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. Although no electoral district of the Police Jury has ever had a majority of black voters, Jerome Darby, a black resident of Bossier Parish, had been elected three times (the last time without opposition) by 1992 to represent a majority-white district as a member of the Police Jury. App. 79a. Another black representative preceded Mr. Darby in that district.

Because of demographic shifts that were reflected in the 1990 census, the Police Jury was obliged by Louisiana law to redraw its electoral districts. The aim of this redistricting was to change existing boundaries as little as possible while fashioning districts of roughly the same population. App. 79a. On April 30, 1991, all members of the Police Jury, including

Jerome Darby, its black member, approved a plan containing two districts with substantial black populations, but no district with a black majority. Specifically, District Four was 45.2% black, and District Seven was 43.9% black. App. 167a ¶ 59. The plan was submitted to the Justice Department on May 28, 1991, and on July 29, 1991, the Attorney General precleared it. Contrary to the insinuations of the appellants, the Police Jury submitted all materials required under Section 5; a covered jurisdiction is under no obligation to submit objections received from citizens or special interest groups. 28 C.F.R. §§ 51.53-51.58. After the Attorney General's preclearance, new elections were held. For the third consecutive time, Jerome Darby was elected from a majority-white district. App. 79a.

The Bossier Parish School Board was also required to redraw its electoral districts. Given that the School Board and the Police Jury had shared the same district boundaries until 1980, the School Board approached the Police Jury to formulate a common redistricting plan. App. 79a. The Police Jury rejected this overture and adopted its own redistricting plan. State law expressly prohibited the School Board from changing, splitting, or consolidating the precincts established by the Police Jury for the Police Jury's 1991 redistricting plan. J.A. 265-66 ("The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1."). Thus, it would have been a facial violation of state law for the School Board to adopt the NAACP plan, or for that matter any plan that created a black majority district, because as the parties have stipulated: "[i]t is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines." App. 195a ¶ 152. The failure to abide by this mandatory state law requirement would have rendered the Board's plan "null and void." J.A. 266.

Appellants have sought to undermine the force of this state law requirement by consistently making the demonstrably false assertion that the School Board could have requested the *Police Jury* to split precinct lines so that the NAACP plan might be adopted. Appellants neglect to mention the unambiguous state law which makes clear that the School Board could not have gone back to the Police Jury in an effort to have precincts split. Under state law, the School Board was required to redistrict *prior to December 31, 1992*. J.A. 65; LA R.S. 17:71.5A. And under state law, the Police Jury could only make changes to its existing precincts *after December 31, 1992*. J.A. 277. Thus, it was *impossible* for *either* the School Board or the Police Jury to sanction any precinct splits prior to the mandatory deadline for the School Board to adopt a redistricting plan.[2] This requirement under state law that school boards and Police Juries use the *same* precincts as "building blocks" for their districts is, of course, entirely rational.[3] Splitting precincts by divergent district lines engenders substantial costs and creates significant voter confusion. App. 107a; *see Bush v. Vera*, 517 U.S. 952, 974-75

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[2] The United States argued in *Bossier I* that it was permissible for the Police Jury to *consolidate* precincts after January 1, 1993. *See* Transcript of Supreme Court Oral Argument at 55-56. This, of course, is irrelevant because there is nothing to consolidate if precincts have not been split in the first place. As noted, such splits could not occur because both the *Police Jury and the School Board* were barred from splitting precincts in the timeframe permitted under state law for the School Board to finalize its redistricting plan.

[3] Although it is true, as appellants note, that the Police Jury and School Board used different *district* lines for the first time in the 1980s, they had *never* split precinct lines and there is no evidence that any of the redistricting plans submitted for the Board's consideration by its cartographer created such splits. Appellants' own witness was able to cite only three examples of *other* Louisiana jurisdictions that had split a "few" precincts, J.A. 137, and all of those apparently were done to accommodate the Justice Department objections, as permitted by state law. J.A. 277. That is not relevant here as the Justice Department had not interposed any objection here in December 1992.

(1996). Thus, even assuming (as the district court did to give appellants every benefit of the doubt) that the Police Jury somehow could have retroactively created 65 additional precincts to render the NAACP plan lawful, neither it nor the School Board had any rational reason to do so.

Moreover, the conclusion that state law prohibited the adoption of any plan creating a black-majority district was uniformly acknowledged by the parties at the time the School Board was considering which plan to adopt. Specifically, the School Board was correctly advised both by its cartographer and the Parish's District Attorney during the September 3, 1992 meeting where the NAACP plan was presented that its massive number of precinct splits violated state law. App. 83a-84a; App. 179a ¶ 102. Likewise, the NAACP itself acknowledged this state law prohibition in 1992, and merely contended that the Supremacy Clause of the United States Constitution required the School Board to ignore state law. J.A. 122.

Subsequently, George Price, president of the local chapter of the NAACP and an appellant-intervenor in this case, submitted his own plan to the School Board that included two majority-black districts, the maximum possible number of such districts and roughly proportional (2/12) to the Parish's black population of 17.6%. App. 83a. The plan was drawn by William Cooper for the exclusive purpose of "creat[ing] two majority black districts," J.A. 260, wholly without regard to precinct boundaries. The NAACP plan subordinates traditional redistricting principles, such as compactness and respect for the political boundaries of towns, the Police Jury districts and precincts. A district court in a related case said of a modified, "improved" version of the NAACP plan, that it "most nearly resembles an octopus as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population to create not one, but two, majority-black districts in Bossier." J.A. 38.

In direct contravention of Louisiana law, the NAACP plan splits 46 precincts, 65 times. Plaintiff's Exh. 11, pp.

1-26; App. 29a. (Some of the precincts suffered more than a single split; thus requiring that they become three or more new precincts.) Of these, 17 precincts would have had less than 20 people in them. Plaintiff's Exh. 11, pp. 1-26.

On September 3, 1992, the School Board responded to NAACP concerns by granting its request that a black person be appointed to the vacant seat on the Board. Far from being a "meaningless palliative" as the government has previously contended, Brief for the Federal Appellant, *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997) (No. 95-1455) ("*Bossier I*") at 28, the appointment of Jerome Blunt is indicative of "the Board's demonstrable willingness to *ensure* black representation on the Board. . . . " App. 112a (emphasis in original).

At the same September 1992 meeting, the Board also passed a motion of intention to adopt the Police Jury's redistricting plan. The jury plan offered "the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need [to be] redraw[n])". App. 106a. By maintaining the integrity of the Police Jury's precincts, the School Board not only complied with Louisiana law, but also avoided the costs and disruptions that would have accompanied the NAACP plan. Furthermore, the School Board understandably assumed that the Department of Justice would automatically preclear a plan that was *identical* to one the Department found to be entirely free of any discriminatory purpose or effect just one year before. The plan also offered the substantial promise that black voters would be able to elect a candidate of their choice as demonstrated by the fact that two districts were well over 40% black.

On January 4, 1993, the School Board submitted its plan to the Department of Justice for preclearance. Despite the identity between the Police Jury and School Board plans, the Department denied preclearance citing "new information, particularly the 1991 [P]olice [J]ury elections held under the 1991 redistricting plan and the 1992 redistricting process for the [S]chool [B]oard." App. 235a. Yet, the only noteworthy

event of the 1991 Police Jury elections was that Jerome Darby was once again re-elected, this time without opposition, to represent a majority-white district.

The clearest evidence of the opportunity of Bossier's black citizenry to participate meaningfully in the electoral process lies in the incontrovertible fact that *three* black candidates have now been elected to the School Board in 1998 under its plan.[4] The election of three black members to the School Board under the new plan completely refutes appellants' repeated claim that the "clearly foreseeable effect" of the plan was to prevent any black candidates from being elected. *See, e.g.*, Brief for the Federal Appellant, *Bossier I* at 22. It also conclusively refutes the wholly unsubstantiated speculation of the Justice Department's expert, Dr. Engstrom, that the white population will not vote for black candidates in Bossier Parish.[5]

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[4] It is well established that a court may take judicial notice of any fact that is not subject to reasonable dispute and is capable of accurate and ready determination. *See, e.g.*, Fed. R. Evid. 201. Accordingly, appellate courts have routinely taken judicial notice of post-trial elections in voting rights cases given their clear relevance to the proceedings. *See, e.g., Southern Christian Leadership Conference v. Sessions*, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), *cert. denied*, 516 U.S. 1045 (1996) ("To provide a current depiction of the composition of the [Alabama Supreme Court] we have taken judicial notice of information not available at the time the district court rendered its decision."); *Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 (5th Cir. 1990) (noting that "given the long term nature and extreme costs necessarily associated with voting rights cases, it is appropriate to take into account elections occurring subsequent to trial.").

[5] *There is no competent evidence of racial bloc voting in any local Bossier Parish elections.* Specifically, Dr. Engstrom was concededly unable to find *any* racial bloc voting in *any* election for *any* Bossier Parish office, pursuant to either the "extreme case analysis [or] bivariate ecological regression analysis" endorsed by the *Gingles* plurality opinion. *Thornburg v. Gingles*, 478 U.S. 30, 52-53 (1986); J.A. at 115-21. The *only* election where racial bloc voting was found was one "exogenous" *state judicial* race (held not just in Bossier Parish), which obviously reflects

Two elections have been held under the redistricting plan adopted by the School Board. In 1994, two black candidates were elected to the School Board. Julian Darby was elected from district 10, which is only 26.7% black. J.A. 47. Vassie Richardson, who is also black, was elected from district 4, which is 45% black. In the interim period between elections, the School Board appointed Kenneth Wiggins, an African-American, to fill a vacancy in district 8 on the School Board. In the 1998 elections, Mr. Wiggins was challenged by a white Republican opponent. Even though Mr. Wiggins' district was only 21.1% black, he won re-election. *See* J.A. 47; Official Elections Results attached hereto at A4. Also, both Julian Darby and Vassie Richardson were again elected, this time without opposition. *Id.* at A8. As a result of these elections in which three black candidates have been elected to the School Board, it is now clear beyond a reasonable doubt that minorities have a meaningful opportunity to elect representatives of their choice in at least three districts under the School Board's plan. They also enjoy *25%* (3/12) of the representation on the School Board in a parish with only *20.1%* black population and *17.6%* black voting age population. App. 79a. Inexplicably, appellants seek to undo this remarkable success story of racially *nonpolarized* voting and *extra-proportional* representation of black School Board officials and replace it with a plan where black voters are packed into *two* majority districts. Since such black majority districts are plainly not needed to provide black voters a viable opportunity to elect their preferred candidates and three blacks have been elected in white-majority districts, there is absolutely no beneficial purpose

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different voting patterns than those for *local representative* office. J.A. 113-15. *See, e.g., Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143, 1149 (5th Cir.), *cert. denied*, 510 U.S. 994 (1993). Even in this single race, the "racial polarization" led to the black candidate receiving 35.7% of the vote in a parish with a 17.6% black voting age population, a positive difference of 18.1%. J.A. 57.

served by this racial gerrymander and its "clearly foreseeable effect" is to *dilute* black voting strength.

ARGUMENT

I. THIS APPEAL IS NONJUSTICIABLE UNDER ARTICLE III.

Appellants seek to have this Court opine on the legal validity of a six-year-old redistricting plan that will never again be used in any election. Article III prevents such an advisory opinion as appellants lack standing and the case is now moot. It has long been recognized that the "case-or-controversy requirement [of Article III] subsists through all stages of federal judicial proceedings, trial and appellate." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Accordingly, "the standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1067 (1997) (citing *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). Likewise, "Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case; it is not enough that there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." *Burke v. Barnes*, 479 U.S. 361, 363 (1987) (citing *Sosna v. Iowa*, 419 U.S. 393, 402 (1975)). Therefore, Article III requires a case to be dismissed as moot "if an event occurs [pending review] that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

This Court lacks jurisdiction over this appeal because, regardless of whether the Court affirms or remands the lower court's declaratory judgment preclearing the Board's 1992 redistricting plan, that plan will never again be used for any purpose. One month after appellants filed their jurisdictional statements in this Court, the last election ever to be held

under the School Board's plan was conducted, and three black candidates were elected. The School Board's plan will never again be utilized because under Louisiana law, the next School Board election will not take place until 2002. LA R.S. 17:52. By that time, new federal decennial census data will be available, and thus the School Board will be required under this Court's one-person one-vote precedents to adopt a new apportionment plan. Accordingly, the current plan is already a dead letter. In the terms of Section 5, the voting "practice" at issue here will never again be "enforce[d]" by any official in Bossier Parish. 42 U.S.C. § 1973c.

The Court has held that Section 5 challenges to election procedures that have already been implemented and that will not be enforced in the future are moot. In *Watkins v. Mabus*, 502 U.S. 954 (1991), the Court considered whether "the preclearance requirements of Section 5 of the Voting Rights Act apply to the changes in the absentee ballot procedures adopted for the September 17 election. . . . " As the election had already occurred and the challenged procedure would not be utilized in the future, the Court held that "[t]he completion of the September 17 election has rendered this claim moot with regard to the relief sought, *i.e.*, an order enjoining the September 17 election for failure to comply with preclearance requirements." 502 U.S. at 954-55. Likewise, in *Hall v. Beals*, 396 U.S. 45 (1969), the Court held that a suit for injunctive relief against a voter residency requirement was moot because the election had already taken place and the statute was no longer in effect.

As these cases reflect, there are two related jurisdictional bars to this Court's jurisdiction to entertain this appeal. First, neither party has any legally cognizable interest in these proceedings. As the parties "invoking federal jurisdiction," appellants "bear[ ] the burden" of establishing that they have a "legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). *See Arizonans*, 117 S. Ct. at 1067; *Diamond v. Charles*, 476 U.S. 54, 62 (1986). It is clear that appellants, who seek only prospective relief, will not suffer

any injury in fact, let alone "actual or imminent" injury, under a plan that will never again be utilized and thus they have no standing to invoke this Court's jurisdiction. *Lujan*, 504 U.S. at 560 (internal quotations omitted). Moreover, this Court has made clear that " '[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.' " *Lujan*, 504 U.S. at 564 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (internal quotations omitted)).

Indeed, if the case is remanded, the School Board, as plaintiff, will voluntarily dismiss its suit because the Board obviously has no interest in obtaining a ruling on the validity of a law that no longer has force or effect. This is a classic case where resolution of the legal issues presented will have no concrete effect on the parties. By contrast, in a typical Section 5 case, the requisite "controversy" exists because a covered jurisdiction has an interest in eradicating the presumptive injunction Section 5 imposes on all voting changes. No such interest obtains, however, where the voting practice in question will not be used even absent the presumptive injunction imposed by Section 5.

For essentially the same reason, the case is now moot. This Court has repeatedly held that Article III precludes review of laws that have expired and thus have no further force or effect. *See, e.g., Burke*, 479 U.S. at 363. Such cases are moot because where a party seeks injunctive relief and the law is no longer in effect, there is quite plainly no live case or controversy. Just so here, appellants' attempt to "prevent" the Board's redistricting plan from being used in any future election is of purely academic interest because the Board will not and cannot use the plan for voting purposes regardless of how the Court rules. *See Lawyer v. Department of Justice*, 117 S. Ct. 2186, 2194 (1997) (" 'The real value of the judicial pronouncement – what makes it a proper judicial resolution of a "case or controversy" rather than an advisory opinion – is in the settling of some dispute *which affects the behavior of the*

defendant towards the plaintiff.' ") (quoting *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)) (emphasis in original).

Stated somewhat differently, there is no relief that the Court can grant which will redress appellants' purported injuries. *See, e.g., Oil, Chemical and Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 371 (1960); *Northeastern Fla. Chapter of Associated Gen. Contractors v. Jacksonville*, 508 U.S. 656, 669-70 (1993) (O'Connor, J., dissenting).[6] Any relief entered in this action will have no effect: if a declaratory judgment issues, the School Board's plan will not be used for future elections; if a declaratory judgment does not issue, the School Board's plan will not be used in future elections. Preventing enforcement of a law that is already a nullity cannot redress any injury.

In this regard, it is important to recognize that this litigation cannot result in an order invalidating the 1998 elections and requiring that new elections be held. Rather, all that the district court could do on remand is withdraw its prior declaratory judgment, and therefore *prospectively* prohibit appellee from conducting *future* elections under this plan, a result that is already compelled. Such an order, however, would have no effect on the 1998 elections conducted pursuant to the preclearance order already issued, just as this Court's prior remand had no effect on the 1994 elections.

Moreover, although it is irrelevant to whether *this* case presents a live controversy, we further note that no other court could undo the 1998 elections for any alleged Section 5 violation. Rather, the local Section 5 district courts are sharply limited to addressing "[t]he only issue" over which they have jurisdiction, *i.e.*, "whether a particular state enactment is subject to the provisions of the Voting Rights Act, and

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[6] Needless to say, a redistricting plan with a life span of 8 to 10 years is not "capable of repetition, yet evading review." *Morse v. Republican Party*, 517 U.S. 186, 235 n.48 (1996) (Stevens, J.). Moreover, the Board has "disavowed" future use of the practice at issue here and no monetary payments have been made by appellants. *Id.*

therefore must be submitted for approval before enforcement." *Allen v. State Bd. of Elections*, 393 U.S. 544, 558-59 (1969). Thus, the local district courts may prospectively enjoin elections where the voting change has not been submitted and, as a corollary power in some circumstances, may order new elections where no such preclearance had been obtained prior to the election. *See, e.g., Berry v. Doles*, 438 U.S. 190 (1978). Here, however, the School Board elections in October of this year were held pursuant to a plan that had been submitted and precleared in conformance with Section 5.[7] In light of this preclearance, the local law adopting the Board's redistricting plan is entitled to the same presumption of validity as any law not subject to Section 5's constraints and appellants did not seek to stay the D.C. district court's order to prevent the October elections. Particularly since the local district court has no authority to second-guess the validity of the preclearance order of the court below, it cannot undo the elections authorized by that court.[8] Consequently, so far as we can discern, no Section 5 case has ever invalidated any election because it was based on a voting change that had been "erroneously" precleared by a court with jurisdiction prior to the election. As a practical matter, of course, no rational equity court would undo an election where *three* districts have just elected black candidates in order to substitute a plan providing black voters with an opportunity to elect *two* candidates of their choice.

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[7] Specifically, the district court's order in this case stated that "plaintiff Bossier Parish School Board is given pre-clearance for its election plan adopted on October 1, 1992, and [ ] it shall have a declaratory judgment to that effect." *Bossier Parish Sch. Bd. v. Reno*, No. 94-01495 (D.D.C. May 1, 1998).

[8] *Allen v. State Bd. of Elections*, 393 U.S. 544, 549-50 (1969) ("Once the State has successfully complied with § 5 approval requirements, private parties may enjoin the enforcement of the new enactment only in traditional suits attacking its constitutionality; there is no further remedy provided by § 5."); *Lopez v. Monterey County*, 117 S. Ct. 340, 349 (1997); *Berry*, 438 U.S. at 193 (Brennan, J., concurring).

In short, even if Article III permitted it, there is simply no practical reason to determine whether a six-year old redistricting plan that will never again be used and has resulted in the election of three black candidates was unlawful because it was allegedly "designed" to prevent the election of two black candidates. Given the dispositive nature of these threshold jurisdictional issues, this case does not warrant this Court's plenary review as no substantial federal questions are properly before the Court.

II. THE DISTRICT COURT DID NOT RULE THAT SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

As they did in the first appeal in this case, the United States and private appellants seek to create a legal issue where none exists by misinterpreting the actual rationale of the court below. App. 10a (Silberman, J., concurring) ("[T]he government filings in the Supreme Court were deceptive."). In its first *Bossier* opinion, this Court expressly left "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. Appellants maintain that the court below resolved this legal issue by holding that, as a matter of law, only retrogressive intent can violate Section 5 and, as a consequence, it did not address whether the Board possessed a discriminatory, albeit non-retrogressive, purpose. At the same time, however, appellants also contend that the court below expressly "*declined*" to resolve this legal issue that the Court had reserved. U.S. J.S. at 12; Appellant-Intervenors' Jurisdictional Statement ("Int. J.S.") at 14. Appellants have therefore simultaneously taken the inherently contradictory positions that the court below *resolved* the question of whether Section 5 reaches beyond retrogressive intent and that it *declined* to resolve the question of whether Section 5 reaches beyond retrogressive intent. The truth, however, is that the district court did decline to resolve this legal question. It did so because it was unnecessary to its decision since it had made the *factual* finding

that there was no evidence " 'that the Board enacted the [redistricting] plan with some non-retrogressive, but nevertheless discriminatory, "purpose." ' " App. 3a n.2 (quoting *Bossier I*, 117 S. Ct. at 1501).

First, the lower court established that it was fully aware that the Court had "left for another day the question" whether Section 5 prohibits actions taken with non-retrogressive discriminatory intent. App. 3a. It then "decline[d]" to "answer the question the Court left for another day" because "the *record will not support* a conclusion that extends beyond the presence or absence of retrogressive intent." *Id.* (emphasis added). While the court could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose' " it found that "those imagined facts are *not present here.*" App. 3a-4a (emphasis added).

Thus, the district court plainly stated that resolution of the question whether Section 5 prohibits a discriminatory, but non-retrogressive, purpose was unnecessary to decide this case because the facts supporting any such discriminatory purpose were "not present here." It did not hold, as appellants maintain, that if such discriminatory purpose were "present here," the Board would nonetheless be entitled to preclearance under Section 5 because that statute proscribes only "retrogressive" intent.

The rest of the court's analysis further confirms that it was analyzing the question of "non-retrogressive, but nevertheless discriminatory, 'purpose.' " First, it plainly stated that, as it had already ruled in *Bossier I*, the School Board had the "difficult[ ]" "burden to prove the *absence* of *discriminatory* intent." App. 5a. (First emphasis in original, second emphasis added). Next, the court analyzed the Board's reasons for adopting the Police Jury plan *in preference to the NAACP* plan, not whether the Board had adopted the Police Jury plan for the purpose of putting minorities in a worse position than they enjoyed under the Board's 1980 redistricting plan. Thus, it squarely held that "the school board's resort

to the pre-cleared Jury plan (which it mistakenly thought would easily be pre-cleared) and its focus on the fact that the Jury plan would not require precinct-splitting, while the NAACP plan would, were 'legitimate, nondiscriminatory, motives.' " *Id.* Again, then, the court was holding that the Board's "motives" for adopting the Jury plan in preference to the NAACP plan were "legitimate [and] non-discriminatory" because the Police Jury plan better furthered the race-neutral policy of preserving precincts than the NAACP plan. Comparing the relative virtues of the Police Jury plan and the maximizing alternative proposed by the NAACP makes no sense if the court were analyzing only whether the Board's purpose was to cause retrogression. For "[r]etrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its *existing plan*." App. 35a (emphasis added). In contrast, the court below analyzed whether the Board adopted the Police Jury plan over the "alternative voting practice . . . benchmark" proposed by the NAACP for impermissible or "non-discriminatory" "motives." App. 4a, 5a. This is classic "discriminatory purpose" analysis used in all *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977), and employment cases – *i.e.*, whether the minority applicant (or integrative alternative) was rejected for racial reasons or for "legitimate, nondiscriminatory reasons." *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 576 n.8 (1978).

Similarly, when the court analyzed the impact of the proposed plan under *Arlington Heights* and this Court's remand, the district court did not look only at "whether the Jury plan bears more heavily on blacks than the pre-existing plan." App. 5a. Rather, after disposing of private appellants' argument that the Jury plan had such a retrogressive effect, the court analyzed the other "allegedly dilutive impacts of the Jury plan" that appellants had offered "in support of its *discriminatory* intent argument." App. 6a (emphasis added). Of course, as the district court was well aware, this Court in *Bossier I* had used the term "dilutive impact[ ]" to denote a

situation where a jurisdiction chooses a plan that "dilutes" black votes as compared to a "reasonable alternative voting . . . benchmark" and in contradistinction to a plan which had a "retrogressive effect" because it diluted black votes more than the "existing plan." App. 37a, 35a. *See* App. 46a-47a. *See also* App. 10a-11a (Silberman, J., concurring). Thus, as instructed by this Court on remand, the district court was analyzing whether the choice of the allegedly "dilutive" alternative reflected a "discriminatory intent."

In this regard, the court found that the Board's plan could have reflected an impermissible purpose if it had "deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote" by, for example, "fail[ing] to respect communities of interest and cutting across attendance boundaries." App. 6a. In this case, however, it found "an absence of such evidence in this record" and thus the discriminatory purpose assertion to be "too theoretical, and too attenuated, to be probative." *Id.*[9] Thus, the court correctly considered and rejected appellants' assertion that the Board had "split . . . minority neighborhoods that would have been grouped into a single district . . . if the [Board] had employed the same line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction." *Johnson v. DeGrandy*, 512 U.S. 997, 1015 (1994). Examining such evidence of "fragmentation" is standard analysis in determining whether a jurisdiction was acting

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[9] To the contrary, as is demonstrated by the fact that the Police Jury plan was precleared after careful scrutiny by the Justice Department, the Board's plan kept intact any reasonable concentration of minority voters that was feasible under neutral principles and state law. In a parish with a 20.1% black population, this resulted in the creation of two districts with 45% and 43.7% black populations, respectively, and four districts with black populations of between 21% and 29%. J.A. 47. It merely did not seek, as the NAACP plan concededly did, to unite through a race-conscious gerrymander widely dispersed black concentrations that never would have been united were their racial composition different.

with the discriminatory purpose of intentionally diluting minority voting strength.

Finally, the district court opinion clearly stated that it was adhering to the same "method of analysis" as its "earlier" decision. App. 5a. The earlier decision plainly focused exclusively on whether the NAACP plan was rejected for impermissible racial reasons, but did not focus on retrogressive intent. App. 105a. The concurring opinion emphasized in this regard that the court was *again* analyzing whether " 'the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts.' " App. 9a (quoting App. 113a). It noted that it had both considered "dilutive impact" and applied the *Arlington Heights* framework in its first opinion – contrary to appellants' representation to this Court in the first *Bossier* appeal. App. 10a. The concurrence then affirmatively stated that it engaged in such analysis again, while adding only that it was "now" dealing expressly with the Board's compliance with the outstanding school desegregation decree. App. 11a. Thus, the concurrence further confirms that the district court opinion was simply fleshing out its first discriminatory purpose analysis, and was not substituting some new legal standard that focused exclusively on retrogressive intent.

To be sure, the majority opinion adverts on several occasions to the Board's "retrogressive intent." App. 6a-7a. In context, however, this should not be read as indicating that the district court somehow had *sub silentio* made the legal determination that *only* retrogressive intent violates the purpose prong of Section 5. Rather, these statements must be read in conjunction with the district court's threshold decision that there was no *evidence* of "non-retrogressive, but nonetheless discriminatory, 'purpose,' " and its incorporation of its prior findings that the Board's "change was undertaken without a discriminatory purpose." *See* App. 105a. Given the absence of such discriminatory purpose evidence, the court below quite naturally sometimes phrased its conclusions in

terms of retrogressive intent. Since, in this opinion, the court had already found that rejection of the NAACP plan was done pursuant to "legitimate, non-discriminatory motives," it did not need to reiterate that finding when it was dealing with each of the separate pieces of the *Arlington Heights* evidence. This is particularly true since, when considering each of the *Arlington Heights* factors, it incorporated by reference the court's earlier decision – in which it plainly did find that the plan was not motivated by discriminatory intent. *See* App. 6a-7a. Finally, as noted, the court often stated its conclusions in terms of "discriminatory" purpose, not "retrogressive" purpose. App. 5a, App. 6a (appellants had failed "to rebut the non-discriminatory reasons advanced by the school board" for adopting its plan).[10]

In short, it is quite implausible that the lower court would have resolved the legal question that this Court made clear was important and unsettled without discussing in any way the reasons for adopting this legal position. When coupled with the court's express refusal to resolve the legal question of Section 5's scope, the decision cannot reasonably be read as deciding that issue one way or another. At a minimum, this Court should not resolve that concededly unsettled legal issue in circumstances where it is, at best, ambiguously presented.

III. THE PURPOSE INQUIRY UNDER SECTION 5 OF THE VOTING RIGHTS ACT RELATES EXCLUSIVELY TO RETROGRESSIVE INTENT.

If the Court concludes it has jurisdiction over a live "case or controversy" and decides to resolve the issue raised by appellants, the Court should affirm on the ground that the purpose inquiry under Section 5 of the Voting Rights Act relates exclusively to retrogressive intent. This conclusion is

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[10] Similarly, while the court did say that the Board's action reflected a "determination to maintain the status quo," it is unclear whether the status quo referred to was the previously enacted Police Jury plan or the Board's own 1980s redistricting plan. App. 7a.

mandated by the plain language of the statute, its purpose, and its structure.

It is a bedrock principle of this Court's statutory construction jurisprudence that "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). *See also Robinson v. Shell Oil Co.*, 117 S. Ct. 843, 846 (1997) ("Our inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.' ") (quoting *United States v. Ron Pair Enterprises*, 489 U.S. 235, 240 (1989)); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("[W]hen a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished."). The interpretation of the term "purpose" under Section 5 presents just such a case where the text of the statute resolves its meaning. Section 5 provides in pertinent part that a covered jurisdiction is entitled to a declaratory judgment authorizing a proposed voting change where the practice at issue "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " 42 U.S.C. § 1973c. Under the statute then, preclearance will be denied if a proposed change has either (1) the "purpose . . . of denying or abridging the right to vote on account of race or color" or (2) "the effect of denying or abridging the right to vote on account of race or color." Significantly, it is agreed by all that a proposed change has the "effect of denying or abridging the right to vote" only if it has retrogressive effect on minority voters. *See, e.g.*, App. 46a ("we have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one."); *City of Lockhart v. United States*, 460 U.S. 125, 134 (1983); *Beer v. United States*, 425 U.S. 130, 141 (1975). Thus, the "purpose . . . of denying or abridging the right to vote" must also be understood to relate exclusively to retrogression.

A contrary conclusion can only be reached if one assumes that the phrase "denying or abridging the right to vote on account of race or color" has a different meaning as it relates to purpose and effect. Such an interpretation would be absurd, as no principle of common usage, grammar, or logic would suggest a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun. Not surprisingly, appellants have not cited to a single case where this Court has endorsed such a counterintuitive and anomalous method of construing a statute. If the phrase "abridging or denying the right to vote" refers to retrogression as it relates to the term "effect," it inexorably follows that it must have the same meaning as it applies to the term "purpose." *See, e.g., BankAmerica Corp. v. United States*, 462 U.S. 122, 129 (1983) ("[W]e reject as unreasonable the contention that Congress intended the phrase 'other than' to mean one thing when applied to 'banks' and another thing as applied to 'common carriers,' where the phrase 'other than' modifies both words in the same clause."); *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980).

Although resort to additional sources is unnecessary in light of the unambiguous meaning of the statute's plain language, the purpose of Section 5 confirms the foregoing conclusion. The Court has repeatedly held that the purpose of Section 5 was "to halt actual retrogression in minority voting strength. . . . " *City of Lockhart*, 460 U.S. at 133. Thus, in *Lockhart*, " '[s]ince the new plan did not increase the degree of discrimination against [the City's Mexican-American population], it was *entitled* to § 5 preclearance [because it was not retrogressive].' " App. 36a (quoting *Lockhart*, 460 U.S. at 134) (emphasis added). Likewise, in *Beer*, the Court elaborated: "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective franchise of the electoral franchise." 425 U.S. at 141. *See also Lockhart*, 460 U.S. at 134 ("the aim of Section 5 was to prohibit *only* retrogressive changes")

(emphasis added); *City of Richmond v. United States*, 422 U.S. 358, 388 (1975) (Brennan, J., dissenting) ("the fundamental objective of § 5 [is] the protection of *present* levels of voting effectiveness for the black population.") (emphasis in original). As this Court explained in its prior opinion, Congress achieved this "limited purpose" by " 'freezing election procedures in the covered areas' " and thereby prevented further retrogression in the voting rights of minorities. App. 34a (quoting *Beer*, 425 U.S. at 140) (internal citations omitted).

This view of the "limited purpose" of Section 5 is entirely consistent with, and in fact necessitated by, the structure of the statutory scheme. Although the provisions of the Voting Rights Act taken together certainly intended to "rid the country of racial discrimination in voting," *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966), it was left to Section 2 of the statute to provide a remedy against existing forms of discrimination. By contrast, Section 5 was implicated only where a *change* in a voting practice or procedure was proposed by a covered jurisdiction. By specifically linking application of Section 5 to a change in a procedure, the statute necessarily assumes that Section 5 has no bearing on the perpetuation of existing practices, even if such practices are maintained for discriminatory purposes. Rather, Section 2 of the Voting Rights Act and the Constitution are the devices for stopping continued use of practices that were adopted for a discriminatory purpose. In short, the structure of the statute confirms what the text and purpose of Section 5 make clear: both the purpose and effect tests of this provision relate exclusively to retrogression.

The limited availability of Section 5 relief is dictated by the "severe" burdens that this provision places upon the states. *Allen*, 393 U.S. at 556. *See also Katzenbach*, 383 U.S. at 334 (noting the "exceptional conditions" that justified the utilization of such an "uncommon exercise of congressional power"); *id.* at 360 (Black, J., concurring and dissenting) (Section 5 represents "a radical degradation of state

power. . . . "). Under Section 5, the normal heavy presumption of validity for state laws is reversed, and the state law is deemed presumptively *unlawful* until the state has demonstrated an absence of retrogressive purpose and effect. *Cf. Parham v. Hughes*, 441 U.S. 347, 351 (1979). Consequently, it has long been recognized that significant "federalism costs [are] already implicated by § 5 preclearance." App. 38a (citing *Miller v. Johnson*, 515 U.S. 900, 926 (1995)). Accordingly, it was entirely appropriate for Congress to have limited the reach of Section 5's presumptive injunctive effect to voting procedures that were motivated by a retrogressive intent or that had a retrogressive effect. This creates no risk that minorities will be subjected to plainly purposeful discrimination since such action will easily be prevented through Section 2 or constitutional challenges.

At bottom, appellants' attempt to refute the compelling evidence of the "limited purpose" of Section 5 stems from their belief that the Department of Justice should not preclear a plan that perpetuates "long-entrenched racial discrimination." U.S. J.S. at 20. But it is clear that *Section 5 does* plainly tolerate "continu[ing] in place a discriminatory status quo" since it reaches only *alterations* of that status quo. *Id.* at 25-26. Again, Section 2 and the Constitution deal with efforts to *maintain* discriminatory practices. Indeed, this Court in *Bossier I* rejected an almost identical argument, *i.e.*, Section 5 simply must be interpreted to prohibit clear Section 2 violations because otherwise the Attorney General would be forced to preclear a change she believes is unlawfully discriminatory. App. 37a, 62a. Since it is fully consistent with Section 5's purpose and structure to conclude that the Attorney General has no authority to withhold preclearance for "clear violations" of Section 2, it is equally legitimate to conclude that she is without authority to deny preclearance for constitutional violations. So recognizing the "limited substantive goal" of Section 5 in no way "tolerates" unlawfully discriminatory practices, it simply recognizes that such practices

should be challenged under the laws which render them illegal.

In the face of the unambiguous text and plain purpose of the statute, appellants improperly seek to invoke the legislative history of the 1982 reenactment of Section 5 as support for the proposition that the statute extends well beyond the search for retrogressive intent. Specifically, appellants invoke a footnote in the 1982 Senate Report which, they claim, demonstrates that Congress understood that Section 5, as interpreted in *Beer*, prohibited changes with a discriminatory purpose. U.S. J.S. at 19 (citing S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982)). But this Court has already twice ruled that the Senate Report's understanding of *Beer* in no way controls the interpretation of Section 5 if, as here, that legislative history is in any way inconsistent with the statute's language and structure. First, relying on the very same Senate Report footnote offered by appellants, Justice Marshall argued in his *Lockhart* dissent that the 1982 Congress believed "that the rule laid down in *Beer* governed *ameliorative* changes," but did "not allow covered jurisdictions to adopt voting procedures which maintain existing discrimination." 460 U.S. at 145 (Marshall, J., dissenting) (emphasis in original). The *Lockhart* court nonetheless ruled that Section 5 permitted changes which either ameliorated *or* maintained the prior system because that result was required by the statute's language and structure. 460 U.S. at 134; App. 42a (describing *Lockhart* as "reaching its holding over Justice Marshall's dissent, which raised the argument now advanced by appellants regarding this passage in the Senate Report"). Similarly, in *Bossier I*, this Court ruled that the Senate Report's plain statement that Congress understood *Beer* to reach discriminatory "results" did not authorize a Section 5 objection to challenge such results. App. 42a. Thus, appellants' invocation of this very same footnote for the third time does not support their extra-textual interpretation of Section 5.

To be sure, "*Beer's* dictum suggests that any changes that violate" the Constitution also violate Section 5. App. 71a

(Stevens, J., dissenting in part and concurring in part). *See also* App. 39a (*Beer* "cited in *dicta* a few cases to illustrate when a redistricting plan might be found to be constitutionally offensive."). As an initial matter, of course, this dictum cannot alter the inexorable effect of the Section 5 statutory language. In any event, it is not at all clear that the *Beer* court believed that rejection of a proposed black-majority district(s) in a single-member redistricting scheme would constitute a constitutional violation, even if the rejection was motivated in part by racial concerns. Rather, although the law was unsettled because this Court had never struck down a single-member redistricting plan on constitutional grounds, the standard seemed to be that single-member redistricting schemes, as opposed to plans with multi-member districts, violated the Constitution only if they caused retrogression. Thus, in *City of Mobile v. Bolden*, 446 U.S. 55 (1980) – the case establishing the constitutional standard for vote dilution cases – the plurality noted that, under prior cases, a "districting statute otherwise acceptable, may be invalid because it fences out a racial group so as to deprive them of their *pre-existing municipal vote*. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)." *City of Mobile*, 446 U.S. at 69 n.14 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 751 (1973) (emphasis added)). In contrast, it noted that "multi-member districts" could be unconstitutional without such retrogression in minorities' "pre-existing . . . vote," if it were shown that at-large districts had been deliberately "*employed* to minimize or cancel out the voting strength of racial or political elements of the voting population." *Id.* (emphasis in original) (internal quotations and citations omitted). Thus, the *Mobile* plurality, and pre-*Beer* cases, seemed to strongly indicate that a single-member districting plan could violate the Constitution only if it caused retrogression by taking away minorities' "*theretofore enjoyed* voting rights," but not by engaging in even a race-conscious failure to create a black majority district. *City of Richmond v. United States*, 422 U.S. 358, 378-79 (1975) (quoting *Gomillion*, 364 U.S. at 347) (emphasis added). *See*

also City of Mobile, 446 U.S. at 85 n.4 (Stevens, J., concurring) (same); *id.* at 94 ("[W]e must accept the choice to retain Mobile's commission form of government as constitutionally permissible even though that choice may well be the product of mixed motivation, some of which is invidious.").

This reading of *Beer* is buttressed by the fact that the opinion, in explaining the constitutional standard to which it referred, stated that it could not "rationally" be argued that the Constitution was violated because a Louisiana jurisdiction (with a long history of discrimination) maintained a redistricting scheme that "almost inevitably would have the effect of diluting the maximum potential impact of the Negro vote." *Beer*, 425 U.S. at 142 n.14, 136. *See also id.* at 142 n.14 (the challenged redistricting plan "does not remotely approach a violation of the constitutional standards enunciated in those cases"). Obviously, if intentionally perpetuating a discriminatory redistricting system did constitute a constitutional violation, it certainly could be reasonably asserted that the New Orleans redistricting plan violated that standard. Moreover, in 1976 it was not at all clear that the rejection of a *black majority* district constituted vote dilution since creating such a district "*necessarily decreases* the level of minority influence in surrounding districts, and to that extent 'dilutes' the vote of minority voters in those other districts, and perhaps dilutes the influence of the minority group as a whole." App. 52a (Thomas, J., concurring). The Court had explicitly noted that it was not possible to determine whether the absence or presence of *minority-majority* districts diluted minority votes in *Wright v. Rockefeller*, 376 U.S. 52 (1964), the only case prior to *Beer* involving a single-member redistricting scheme: "Undoubtedly some of these voters . . . would prefer a more even distribution of minority groups among the four congressional districts, but others . . . would argue strenuously that the kind of districts for which appellants contended would be undesirable and, because based on race or place of origin, would themselves be unconstitutional." *Id.* at 57-58.

More generally, of course, it was not at all settled when *Beer* was decided in 1976 that the Constitution embodied a "discriminatory purpose" standard, particularly in the vote dilution area. *See* App. 39a; *City of Mobile*, 446 U.S. at 62, 66 (plurality opinion); *id.* at 85-86, 88-90 (Stevens, J., concurring); *id.* at 120 (Brennan, J., dissenting) ("Our vote-dilution decisions, then, involve the fundamental-interest branch, rather than the anti-discrimination branch, of our jurisprudence under the Equal Protection Clause."). Moreover, it remains unclear to this day whether the Fifteenth Amendment – the constitutional provision most closely mirroring the language of Section 5 – even reaches an intentionally discriminatory vote dilution claim. *See Voinovich v. Quilter*, 507 U.S. 146, 159 (1993) ("This Court has not decided whether the Fifteenth Amendment applies to vote-dilution claims. . . . "); App. 58a and cases cited therein.

In light of all this, it simply cannot be reliably inferred that the *Beer* Court's reference in *dicta* to the constitutional standard denoted a discriminatory, albeit non-retrogressive, purpose – even assuming that the Court's *dicta* could expand the scope of Section 5 to invalidate changes not violated by Section 5 *itself*. In addition, *Beer* dealt with a situation where the jurisdiction was seeking preclearance of the redistricting plan for the *first time* after Section 5 was enacted in 1965. In the early 1970s, a conscious effort to maintain the status quo would very often perpetuate a racially discriminatory system of the sort that the Voting Rights Act was designed to eradicate. Here, in contrast, the Board's pre-existing 1980 redistricting plan was affirmatively found by the Attorney General to be free of any discriminatory purpose or effect. (Moreover, of course, the Board's plan mirrored precisely a plan the Attorney General had found free of discriminatory purpose and effect just one year before, when the Police Jury plan had been precleared.) Since maintenance of a non-discriminatory system cannot, under ordinary English usage, perpetuate a discriminatory system, a non-retrogressive plan will almost

never be "discriminatory" absent a retreat from the previously precleared system.

The rest of the cases cited by appellants can be disposed of summarily. Appellees' assertion that the Court has previously resolved the question of whether Section 5 reaches beyond retrogressive intent is obviously belied by the fact that the *Bossier I* court reserved this unsettled question. App. 45a-46a. Nor did either of the concurring opinions maintain that the Court's precedent required such a rule. App. 61a, 70a, 76a.[11]

The case upon which appellants primarily rely, *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), drew no distinction between retrogressive and discriminatory purpose and the result in that case had nothing to do with this distinction. In *Pleasant Grove*, the Court considered a covered jurisdiction's annexation of a parcel of land inhabited only by whites and an uninhabited parcel that was "intended for white developments." *Id.* at 468. Although the present retrogressive effect of these annexations was *de minimis*, the Court stated that Section 5 reached "future effects" and that "an impermissible purpose under § 5 may relate to anticipated as well as present circumstances." *Id.* at 471-72. The issue in

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[11] The court's summary affirmance in *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983), is of little moment since summary affirmances are of slight precedential value. *See, e.g., Ashland Oil, Inc. v. Caryl*, 497 U.S. 916, 920 n.* (1990). In any event, that decision is entirely consistent with the opinion below since the primary flaw in *Busbee* was that the submitting jurisdiction had "split a cohesive black community in Districts 4 and 5" thus causing minor retrogression in District 4, albeit not in District 5. *Busbee*, 549 F. Supp. at 499. *See id.* at 498. As noted, the court below considered and rejected the notion that the Board had split or "fragmented" any cohesive black community. In *Miller v. Johnson*, 515 U.S. 900 (1995), the Court *overturned* the Justice Department's finding of discriminatory purpose as inconsistent with *any* understanding of that term and thus, as in *Bossier I*, resolution of the sort of purpose proscribed by Section 5 was "not necessary to [the court's] decision." App. 45a.

Pleasant Grove, therefore, was simply whether Section 5 reached anticipated circumstances, as well as present circumstances, but it drew no distinction between "discriminatory purpose" and "retrogressive purpose." Just as an annexation of land *currently* populated by whites alone could make minority voters worse off than they were prior to the annexation (*i.e.* retrogression), so too could annexing land that it was anticipated would be populated by whites. Indeed, the district court opinion faithfully tracked *Pleasant Grove's* distinction between future and present harm. Thus, the court found that Section 5's purpose prong would have been violated if there had been "any corroborating evidence that the School Board had deliberately attempted to break up voting blocks *before they could be established* or otherwise to divide and conquer the black vote." App. 6a (emphasis added). Thus, whatever the rationale of *Pleasant Grove*, it is in no way inconsistent with the court below's reasoning or result.[12]

Finally, although appellants insinuate that the district court's factual findings are "unsupported," U.S. J.S. at 24, this issue is not present here because, unlike their first appeal,

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[12] Likewise, the Court's decision in *City of Richmond* lends no support to appellants' interpretation of Section 5. There, the Court *upheld* an annexation that severely reduced the black population's pre-existing voting strength *notwithstanding* this undisputed *retrogressive* effect. 422 U.S. at 378. The Court then remanded the case to ensure that the motivation behind the annexation was not to cause such obvious *retrogression* in black voting strength, but was done for "verifiable, legitimate reasons." *City of Richmond*, 422 U.S. at 375. In doing so, the Court again equated "changes taken with the purpose of denying the vote on the grounds of race or color" with " 'despoil[ing] colored citizens, and only colored citizens, of their *theretofore enjoyed voting rights*.' " *Id.* at 378-79 (quoting *Gomillion*, 364 U.S. at 347) (emphasis added). Thus, *Richmond* merely holds that an indisputably retrogressive change, which might otherwise survive Section 5 review, will be struck down if the motive in undertaking the annexation was to cause such retrogression, rather than to accomplish some "legitimate" goal. It in no way suggests that a non-retrogressive change may be invalidated if motivated by a non-retrogressive purpose.

appellants have not contended that the district court's factual findings are "clearly erroneous." In any event, the district court's factual finding as to a lack of discriminatory intent is, at the very least, "plausible" and thus must be upheld under Fed. R. Civ. P. 52(a). *Anderson v. City of Bessemer*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

CONCLUSION

For the foregoing reasons, the Court should dismiss the appeal or summarily affirm the judgment of the court below.

Respectfully submitted,

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UNITED STATES OF AMERICA

State of Louisiana

Fox McKeithen

SECRETARY OF STATE

As Secretary of State, of the State of Louisiana, I do hereby Certify that the attached five (5) pages are true and correct copies of the Precinct by Precinct Returns for the following listed offices for the primary election scheduled and held on October 3, 1998, as per the originals on file in the archives of this office.

Member of School Board, District 2, Parish of Bossier
Member of School Board, District 3, Parish of Bossier
Member of School Board, District 8, Parish of Bossier
Member of School Board, District 9, Parish of Bossier
Member of School Board, District 12, Parish of Bossier

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on, this the 3rd day of December, A.D., 1998.

Fox McKeithen

Secretary of State

A1

OFFICE: Member of School Board District 2
PARISH: Bossier (One to be Elected)

CANDIDATE / Precinct Number	1 Knotts	2 Sterlin	3	4	5	6	7
4- 3B	174	121	0	0	0	0	0
4- 4A	209	208	0	0	0	0	0
4- 4B	154	136	0	0	0	0	0
4- 11B	106	85	0	0	0	0	0
Group Subtotal	643	550	0	0	0	0	0
*ABS	24	15	0	0	0	0	0
Parish Total	667	565	0	0	0	0	0
	54.14%	45.86%	.00%	.00%	.00%	.00%	.00%
Grand Total	667	565	0	0	0	0	0
	54.14%	45.86%	.00%	.00%	.00%	.00%	.00%

CANDIDATE LEGEND
1 Knotts
2 Sterling

"Mike" 32
Floyd B. 33

A2

ELCRPT6 — LA SECRETARY OF STATE — 12/03/98
ELECTION RETURNS FOR ELECTION DATE 10/03/98 — PAGE: 1

OFFICE: Member of School Board District 3
PARISH: Bossier (One to be Elected)

CANDIDATE	1 Finck	2 Mitchel	3	4	5	6	7
Precinct Number							
2- 1	112	235	0	0	0	0	0
2- 18B	122	30	0	0	0	0	0
2- 22	393	99	0	0	0	0	0
Group Subtotal	627	364	0	0	0	0	0
4- 2	158	81	0	0	0	0	0
4- 3A	51	80	0	0	0	0	0
Group Subtotal	209	161	0	0	0	0	0
*ABS	86	36	0	0	0	0	0
Parish Total	922	561	0	0	0	0	0
	62.17%	37.83%	.00%	.00%	.00%	.00%	.00%
Grand Total	922	561	0	0	0	0	0
	62.17%	37.83%	.00%	.00%	.00%	.00%	.00%

CANDIDATE LEGEND
1 Finck
2 Mitchell
George C. 34
James A. 35

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ELCRPT6 — LA SECRETARY OF STATE — 12/03/98
ELECTION RETURNS FOR ELECTION DATE 10/03/98 — PAGE: 1

OFFICE: Member of School Board District 8
PARISH: Bossier (One to be Elected)

CANDIDATE	1 Engi	2 Wiggins	3	4	5	6	7
Precinct Number							
2- 11	85	65	0	0	0	0	0
2- 12A	16	19	0	0	0	0	0
2- 17B	26	59	0	0	0	0	0
2- 19	35	59	0	0	0	0	0
Group Subtotal	162	202	0	0	0	0	0
*ABS	6	4	0	0	0	0	0
Parish Total	168	206	0	0	0	0	0
	44.92%	55.08%	.00%	.00%	.00%	.00%	.00%
Grand Total	168	206	0	0	0	0	0
	44.92%	55.08%	.00%	.00%	.00%	.00%	.00%

CANDIDATE LEGEND
1 Engi
2 Wiggins
Jolene 36
Kenneth M. 37

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ELCRPT6 — LA SECRETARY OF STATE — 12/03/98
ELECTION RETURNS FOR ELECTION DATE 10/03/98 — PAGE: 1

OFFICE: Member of School Board District 9
PARISH: Bossier (One to be Elected)

CANDIDATE	1 Barnett	2 Simison	3	4	5	6	7
Precinct Number							
2- 12C	25	55	0	0	0	0	0
2- 13	35	67	0	0	0	0	0
2- 14	51	61	0	0	0	0	0
2- 20	56	100	0	0	0	0	0
2- 23	24	31	0	0	0	0	0
Group Subtotal	191	314	0	0	0	0	0
*ABS	7	7	0	0	0	0	0
Parish Total	198	321	0	0	0	0	0
	38.15%	61.85%	.00%	.00%	.00%	.00%	.00%
Grand Total	198	321	0	0	0	0	0
	38.15%	61.85%	.00%	.00%	00%	.00%	.00%

CANDIDATE LEGEND
1 Barnett
2 Simison

"Brad" 38
Gloria 39

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ELCRPT6 — LA SECRETARY OF STATE — 12/03/98
ELECTION RETURNS FOR ELECTION DATE 10/03/98 — PAGE: 1

OFFICE: Member of School Board District 12
PARISH: Bossier (One to be Elected)

CANDIDATE	1 Jackson	2 Knotts	3	4	5	6	7
Precinct Number							
1- 1	153	117	0	0	0	0	0
Group Subtotal	153	117	0	0	0	0	0
4- 8A	30	59	0	0	0	0	0
4- 8C	6	4	0	0	0	0	0
4- 10A	194	271	0	0	0	0	0
4- 10B	136	218	0	0	0	0	0
Group Subtotal	366	552	0	0	0	0	0
*ABS	5	19	0	0	0	0	0
Parish Total	524	688	0	0	0	0	0
	43.23%	56.77%	.00%	.00%	.00%	.00%	.00%
Grand Total	524	688	0	0	0	0	0
	43.23%	56.77%	.00%	.00%	.00%	.00%	.00%

CANDIDATE LEGEND
1 Jackson
2 Knotts

Juanita S. 40
Mack D. 41

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UNITED STATES OF AMERICA

State of Louisiana

Fox McKeithen

SECRETARY OF STATE

As Secretary of State, of the State of Louisiana, I do hereby Certify that the attached one (1) page is a true and correct copy of a list of unopposed candidates for the following listed offices for the primary election scheduled and held on October 3, 1998, as per the originals on file in the archives of this office.

Member of School Board, District 1, Parish of Bossier
Member of School Board, District 4, Parish of Bossier
Member of School Board, District 5, Parish of Bossier
Member of School Board, District 6, Parish of Bossier
Member of School Board, District 7, Parish of Bossier
Member of School Board, District 10, Parish of Bossier
Member of School Board, District 11, Parish of Bossier

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

this the 7th day of December, A.D., 1998.

Fox McKeithen

Secretary of State

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12/07/98 14:56:59 STATE OF LOUISIANA PAGE 1
1998 ELECTION RESULTS

Office Title / Last Name	Office Description / First Name	Parish / Total Votes	Vote %	Result
Member of School Board Graham	District 1 Michael M.	BOSSIER 0	.00	U
Member of School Board Richardson	District 4 Vassie McCauley	BOSSIER 0	.00	U
Member of School Board Cassibry	District 5 Elizabeth S. "Libby"	BOSSIER 0	.00	U
Member of School Board Ray	District 6 Mary M. "Mary Margaret"	BOSSIER 0	.00	U
Member of School Board Slack	District 7 "J. W."	BOSSIER 0	.00	U
Member of School Board Darby	District 10 Julian L. "Julius"	BOSSIER 0	.00	U
Member of School Board Dowden	District 11 Gary K.	BOSSIER 0	.00	U

* * * E N D O F R E P O R T * * *

A8

Supreme Court, U.S.
FILED
DEC 29 1998
OFFICE OF THE CLERK

No. 98-405

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

1. Appellee argues (Motion to Affirm (Mot.) 9-14) that this case is moot because the next regularly scheduled election for Bossier Parish School Board will not be held until 2002, after the Board should have adopted a new redistricting plan following the 2000 census. The Board's current plan, however, will remain in effect and will govern future elections unless and until it is replaced by another lawful plan. Thus, if the Board holds a special election because of a vacancy, the current plan will be used. See La. Rev. Stat. Ann. § 18:602(2)(A) (1979) (special elections in case of vacancies). And should the Board fail to adopt a new election plan following the 2000 census in time for the 2002 elections, or fail to obtain preclearance for a new plan under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, then the current plan would also be used for the 2002 elections. See *City of Rome* v. *United States*, 446 U.S. 156, 182-183 (1980). This case is therefore similar to numerous cases in which the Court has held that, when a challenged election practice may be used in future

elections, the challenge remains a live controversy despite the holding of the election. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 784 & n.3 (1983); *Storer* v. *Brown*, 415 U.S. 724, 737 & n.8 (1974); *Rosario* v. *Rockefeller*, 410 U.S. 752, 755 (1973).

Moreover, the Attorney General and the private appellants retain a live interest in the outcome of this litigation. If the district court's judgment is reversed, then the Board will presumably move expeditiously to prepare a new plan for preclearance and to hold new elections under that plan if it is precleared. Should the Board fail to do so, then voters or the Attorney General might be entitled to an injunction under Section 5 requiring special elections under a valid plan (either one previously precleared or one fashioned by the federal courts). See *Berry* v. *Doles*, 438 U.S. 190 (1978); *Lopez* v. *Monterey County*, 519 U.S. 9, 18, 21 (1996). The district court's preclearance of the Board's 1992 plan also directly affects the Attorney General's preclearance review of future plans submitted by the Board, for if the lower court's judgment granting preclearance is not set aside, then the Attorney General will have to use the 1992 plan as the benchmark from which to measure retrogression for future redistricting submissions by the School Board. See 28 C.F.R. 51.54(b).[1]

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[1] Even if this case were moot, the appropriate action would not be for the Court to dismiss the appeal (as appellee requests, Mot. 30). Rather, the established practice when a case becomes moot on appeal is for this Court to vacate the lower court's judgment and to remand the case with instructions to dismiss the complaint, so that the lower court's judgment retains no further effect. See *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 71 (1997); *Watkins* v. *Mabus*, 502 U.S. 954, 955 (1991); *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). The course of action suggested by appellee would create an incentive for jurisdictions covered by Section 5 to delay the process of obtaining preclearance. A jurisdiction could wait to file a preclearance action until its election plan was nearly due for reapportionment; then, if it obtained an erroneous declaratory judgment granting preclearance, the jurisdiction could argue that the government's appeal should be dismissed because the plan would not be used in future elections. Section 5, however, was intended to deprive covered jurisdictions of the advantages of delay and extended litigation. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966).

Neither *Watkins* v. *Mabus*, 502 U.S. 954 (1991), nor *Hall* v. *Beals*, 396 U.S. 45 (1969), supports appellee's contention that a challenge to a voting practice becomes moot once the election is held. In *Watkins*, this Court held that voters' Section 5 challenge to special absentee ballot procedures ordered by the district court for an election to the Mississippi legislature became moot once the election was held. See 502 U.S. at 954-955. In that case, however, the district court ordered the special ballot procedures as an interim remedy because the Attorney General had objected to the State's 1991 plan, and elections had to be held under the previously precleared 1982 plan after considerable delay; the court made clear that the absentee ballot procedures were to be used "[s]olely for the September 17[, 1991] primary election for the Mississippi Legislature." 91-434 J.S. App. 6. There was no reasonable likelihood that the absentee ballot procedures would be used again, since future elections, even if held under the 1982 plan, could be planned for in due course. In *Hall* v. *Beals*, the Court held that a challenge to a state statute imposing a durational-residency requirement for voting became moot when the state legislature repealed the challenged requirement, 396 U.S. at 48; in this case, by contrast, the Board's plan remains on the books.[2]

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[2] Appellee requests (Mot. 7-8) that the Court consider the results of Board elections held in 1996 and 1998 under the 1992 plan, in which African-Americans were elected to the Board. The Court

2. Appellee contends (Mot. 14-19) that the district court did not limit its inquiry to retrogressive intent, but rather properly found an absence of a nonretrogressive, yet nevertheless discriminatory, purpose to the Board's plan. That contention cannot withstand scrutiny. After summarily stating that the "record will not support a conclusion that extends beyond the presence or absence of retrogressive intent" (J.S. App. 3a), the court made clear that "[t]he question we will answer, accordingly, is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan." *Id.* at 4a. The district court never again addressed whether the evidence showed a nonretrogressive but discriminatory purpose.

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should decline to consider such evidence outside the record compiled in the district court, as it declined to do on the first appeal in this case. See *Reno* v. *Bossier Parish Sch. Bd.*, 517 U.S. 1154 (1996). The district court invited appellee to reopen the record on remand to address the 1996 election results, but appellee declined that invitation, J.S. App. 1a-2a n.1, and it is bound by that choice. Furthermore, although the *results* of those elections are subject to public notice, those bare results (including the race of the winners) cannot dispose of this case, for they do not provide sufficient information from which to draw a conclusion about the position of minority voters in Board elections. Without further information, the mere fact that black candidates have been elected to the Board, even from majority-white districts, does not permit a court (or the Attorney General) to conclude with assurance that the voting strength of the black community in Bossier Parish is no longer being diluted. Those bare results, for example, provide no information about voter turnout, unusual features about voting patterns in the districts from which those candidates were elected, or other circumstances that might have been peculiar to the 1996 and 1998 elections. Thus, as the district court concluded, "[w]ere we to consider the election results at all, we would need more information about them." *Ibid.*

The district court's discussion of the evidence under the framework of *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), related only to retrogressive intent. When the court analyzed whether the 1992 plan bore more heavily on blacks than on whites, it examined only the "percentage shift in dilution" of blacks' voting strength in one particular district; that is, it considered only whether the plan significantly reduced the percentage of blacks in that district from the percentage under the previous plan, which could amount to retrogression. See J.S. App. 5a-6a.[3] The court also rejected other points raised by the intervenors to show that the Board enacted the plan with an unlawful purpose because, it stated, they would not "support a finding of retrogressive intent." *Id.* at 6a. The district court also precleared the 1992 plan despite finding that the Board's history included a "resistance to court-ordered desegregation" because that evidence was "not enough to rebut the School Board's *prima facie* showing that it did not intend retrogression." *Id.* at 7a. The district court acknowledged "[e]vidence in the record tending to establish that the board departed from its normal practices" in adopting the 1992 plan, but the court found that evidence not probative because it "is not evidence of retrogressive intent." *Ibid.* The court like-

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[3] Appellee suggests (Mot. 16-17) that, when the district court discussed the 1992 plan's dilutive impact, it must have been addressing discriminatory intent generally, and not just retrogressive intent, because it understood that this Court had used the term "dilutive impact" to refer to a discriminatory plan, rather than a retrogressive plan. That suggestion is plainly wrong, for on the prior appeal in this case, this Court made clear that evidence of a plan's dilutive impact is relevant to show retrogressive intent, and it reversed the lower court's earlier refusal to consider such evidence for that purpose. J.S. App. 45a-47a.

wise dismissed the evidence of the contemporaneous statements of Board members because the statements "do not establish retrogressive intent." *Id.* at 8a.

To the extent the district court may have examined the Board's discriminatory but nonretrogressive intent, that examination was plainly insufficient, as we have explained (J.S. 21-26). The district court did not address the evidence of such intent under the *Arlington Heights* framework, as Judge Kessler pointed out (J.S. App. 13a, 24a). Nor did the district court consider the point that the Board's discriminatory intent should preclude preclearance of the plan, even if the Board might have had some legitimate reason for enacting the plan, such as preserving precincts, as appellee suggests (Mot. 15-16). See *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 469 (1987) (reiterating that a covered jurisdiction has the burden to prove "the absence of discriminatory purpose" on its part).

The claimed motive of preserving precincts, moreover, is plainly insufficient to save the 1992 plan, for the record of events makes clear that it could not have motivated the Board to adopt that plan. There is no evidence that the Board was concerned about preserving precincts before the black community of the Parish began to request that a majority-black district be drawn. In fact, the Board anticipated the necessity of splitting precincts in order to adopt a plan that would best serve its legitimate objectives (including preserving the seats of incumbents, a goal that was sacrificed in the 1992 plan, see J.S. 23). In September 1991, after the Attorney General precleared the Police Jury plan, the Board rejected one member's suggestion that it adopt the Police Jury plan, and the Board's cartographer, Gary Joiner, told the Board that it would have to work with the Police Jury to alter precinct lines for its own

plan. J.S. App. 174a. The Board did not move to adopt the Police Jury plan for another year, but rather continued to explore other options. And although appellee notes (Mot. 4) that the Board was theoretically required by statute to adopt a plan before December 31, 1992, there is no evidence that this factor actually constrained the Board's consideration, and the district court made no finding to that effect. To the contrary, because the next regular Board elections were not scheduled until October 1994, the Board had ample time in which to adopt a plan, as its cartographer reminded the members. J.S. App. 172a-173a. The Board did not make the abrupt decision to switch course and adopt the Police Jury plan until September 1992, only two weeks after the NAACP presented a plan that demonstrated that majority-black districts could be created. *Id.* at 180a.

3. Finally, appellee argues (Mot. 19-28) that Section 5 requires the Attorney General and this Court to preclear voting changes enacted with a racially discriminatory intent (as long as those changes do not have a retrogressive effect). The plain language of Section 5, however, states that a covered jurisdiction is entitled to preclearance only if it shows a new voting practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. The language of Section 5 tracks the text of the Fifteenth Amendment itself, which prohibits purposeful racially discriminatory practices in voting, whether or not retrogressive. See *City of Mobile* v. *Bolden*, 446 U.S. 55, 61-65 (1980) (opinion of Stewart, J.). The statutory text also does not indicate that the prohibited purpose is limited to a retrogressive intent. This Court has held that the "effect" prong of Section 5 is limited to a determination

whether the new voting practice is retrogressive. J.S. App. 35a; see also *Beer* v. *United States*, 425 U.S. 130, 140 (1976). But the debate over the "effect" prong has involved how far *beyond* the Constitution itself Congress intended Section 5 to reach; there is no reason to doubt that Congress intended Section 5 to reach "*as far as* the Constitution itself." J.S. App. 57a (Breyer, J.).

Appellee's argument rests heavily on an effort to recharacterize this Court's decision in *Beer*, *supra* (see Mot. 24-28). Appellee acknowledges (Mot. 24-25) that, in *Beer*, this Court stated that a voting change can violate Section 5 if it "so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141.[4] It suggests, however, that at the time of the decision in *Beer*, this Court believed that adoption of a single-member districting plan would violate the Constitution *only* if the plan was enacted with a retrogressive purpose. *Beer* (which involved a single-member districting plan) did not remotely suggest, however, that

[4] Appellee also acknowledges (Mot. 24) that the definitive Senate Report accompanying the 1982 extension of Section 5 expressly approves that formulation of Section 5 in *Beer* (see J.S. 19), but it argues that this legislative history should be disregarded because the Court rejected reliance on the same Report on the prior appeal in this case (see J.S. App. 42a). The aspect of the Senate Report rejected by this Court on the prior appeal, however, involved a different statement in that Report, which suggested that a violation of Section 2 of the Voting Rights Act, by itself, was a ground for denying preclearance under Section 5; that statement in the Senate Report was *contrary* to the Court's earlier construction of Section 5 in *Beer*. The Court expressed doubt that, when Congress reenacted Section 5 without change, it would have silently disapproved the Court's decision in *Beer* without amending the statutory language. *Ibid.* This case involves Congress's *approval* of a different part of the Court's decision in *Beer*, stating that plans that violate the Constitution may not be precleared under Section 5; that congressional ratification deserves great weight.

constitutional vote-dilution claims involving single-member districts would require a different showing of purpose than the showing required for vote-dilution claims involving multi-member districts. Prior to *Beer*, this Court had held multi-member districts unconstitutional without any discussion of retrogression. See *White* v. *Regester*, 412 U.S. 755, 765-770 (1973). Whereas an intent to make the position of minorities worse would indeed be evidence of discriminatory intent, it is not required to show that unconstitutional purpose.

Appellee's efforts to avoid the effect of *City of Pleasant Grove*, *supra*, and *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1166 (1983), are also without merit. Appellee argues (see Mot. 28-29) that *City of Pleasant Grove* is consistent with a requirement of retrogressive intent, but as we have pointed out (J.S. 16), retrogression could not have been at issue there, because the City had no black voters; indeed, the Court specifically rejected the argument made there that, "since the annexations could not possibly have caused an impermissible effect on black voting, it makes no sense to say that [the City] had a discriminatory purpose." 479 U.S. at 471. Appellee appears to acknowledge (Mot. 28 n.11) that this Court rejected the position it is now advancing in *Busbee* v. *Smith*, but maintains that summary decision is entitled to little precedential value.[5] But while *this* Court treats

[5] Appellee also suggests (Mot. 28 n.11) that the lower-court decision in *Busbee* may have found retrogression. The appeal in that case, however, was presented to this Court on precisely the opposite assumption. See 82-857 J.S. 11-12 (citing district court findings of no retrogression). In any event, "[q]uestions which merely lurk in the record are not resolved" by summary affirmances, and "no resolution of them may be inferred." *Illinois State Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 183 (1979) (citations and internal quotation marks omitted).

its own summary decisions as less demanding of adherence than its fully articulated decisions, lower courts are not free to do the same, see *Mandel* v. *Bradley*, 432 U.S. 173 (1977), and so the district court's failure to adhere to *Busbee* warrants the Court's plenary consideration of this appeal.

4. The issue presented on this appeal is one of considerable importance that requires resolution. Beginning shortly after the release of census data in approximately April 2001, thousands of state and local jurisdictions covered by Section 5 will be adopting new redistricting plans and submitting them for preclearance to either the Department of Justice or the United States District Court for the District of Columbia. In every one of those submissions, the intent of the submitting jurisdiction will potentially be at issue. It is essential for both the submitting jurisdictions and the authorities making preclearance determinations to know whether the inquiry required by Section 5 reaches beyond retrogressive intent and is coextensive with the Constitution, and requires the jurisdictions to prove that they did not act with an intent to discriminate against racial minorities.

* * * * *

For the foregoing reasons, and for those set forth in our jurisdictional statement, the Court should note probable jurisdiction.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DECEMBER 1998

Supreme Court, U.S.
FILED
DEC 29 1998
OFFICE OF THE CLERK

Nos. 98-405, 98-406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF
THE UNITED STATES,

Appellant, and

GEORGE PRICE, ET AL.,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the
United States District Court for the District of Columbia

BRIEF OF GEORGE PRICE, *ET AL.*, OPPOSING MOTION TO DISMISS OR AFFIRM

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INTRODUCTION

The Motion to Dismiss or Affirm ("Motion") presents this Court with two telling contradictions. In part I of the Motion, the Bossier Parish School Board ("School Board") urges the Court to decline review of the merits of the decision below on grounds that it is moot, because there has been a general election for the School Board since the decision below using the precleared election plan. The School Board fails to acknowledge that there are legal and practical uses that will be made of the plan. Moreover, the School Board fails to face the consequence of a declaration of mootness at this stage of the proceedings: reversing or vacating of the judgment below.

With respect to parts II and III of the Motion, the School Board argues in part III that the correct legal standard for review of whether an election plan was adopted with the "purpose" of denying or abridging the right to vote on account of race or color "relates exclusively to retrogressive intent" on minority voters. Motion at 19. Yet the School Board argues in part II of its Motion that the three-judge court applied a different standard: Whether the election plan was infected with "non-retrogressive, but nevertheless discriminatory, 'purpose.'" Motion at 15. The School Board thus is trying to shield from appellate review a judgment that it believes evaluated the evidence under the wrong legal standard.

The confusion in the School Board's arguments highlights the importance of this Court's consideration of the decision below on the merits in order to confirm that the purpose prong of Section 5 forbids the implementation of an election change adopted with a racially discriminatory intent whether or not it is retrogressive.

A. This Appeal Is Not Moot Because, If the Decision Below Is Left Undisturbed, the School Board's Redistricting Plan Will Be Used in Any Special Election and To Form the Baseline for Retrogression Analysis in Redistricting After the Year 2000.

The School Board argues that this appeal is moot because its 1992 redistricting plan will "never again be used for any purpose," Motion at 9, and thus no further judicial consideration of the plan is consistent with the "case or controversy" requirement of Article III. The School Board cannot assure this Court that the election plan will "never" be used again.

First, the plan precleared below remains in effect regardless of the passage of the 1998 general election. Although the next scheduled School Board election will not be held until 2002, Louisiana law provides that a special election will be held to fill any vacancy on the School Board which may arise prior to the next scheduled election. LA. R.S. 18:402 (E). On a 12-member school board, the likelihood of at least one vacancy arising due to death, resignation, or other reasons over the course of a four-year term is high. In the event of a special election, the plan precleared by the court below would be used by the School Board, since the terms of that plan are not limited to the 1998 election or to regularly scheduled elections. This case accordingly is different from *Watkins v. Mabus*, 502 U.S. 954 (1991) and *Hall v. Beals*, 396 U.S. 45 (1969), in which the election change at issue was no longer in effect and the election had taken place.

Second, whether the election plan remains valid has important legal consequences and is not "of purely academic interest." Motion at 11. When the School Board adopts a new election plan after the Year 2000 Census, as the School Board pledges to do, Motion at 2, the existing plan will be the benchmark against which a new plan is compared to

determine if it will have the "effect of [denying] or abridging the right to vote on account of race or color," as provided in Section 5. This Court has explained in this case that "[r]etrogression, by definition, requires a comparison of a jurisdiction's new voting plan with its existing plan." App. 35a. 1/ If the preclearance decision is reversed by this Court, a different plan will be used as the benchmark: a new plan, if such a plan is precleared, or the 1980s School Board election plan. This alone creates a significant live controversy.

Finally, this appeal is not moot because equitable relief may be appropriate if the plan precleared below ultimately is found not to satisfy Section 5. *See Clark v. Roemer*, 500 U.S. 646, 660 (1991) (explaining that a "District Court should adopt a remedy [for a violation of Section 5] that in all circumstances of the case implements the mandate of § 5 in the most equitable and practicable manner"). If it is ultimately determined that the plan does not comply with Section 5, the Attorney General or the defendant-intervenors could seek relief such as voiding the election or an order for a special election under a proper plan. *See Clark*, 500 U.S. at 660; *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 182-83 (1985), *Berry v. Doles*, 438 U.S. 190, 192-93 (1978). To find this appeal moot, thereby allowing a discriminatory plan to remain in effect and depriving its victims of any remedy, would be to do precisely "what § 5 was designed to forbid: allow the burdens of litigation and delay to operate in favor of the perpetrators and against the victims of possibly racially discriminatory practices." *Berry*, 438 U.S. at 194 (Brennan, J., concurring).

The School Board should not be heard to complain that the case is moot, in an effort to protect the decision

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1/ "App." references are to the Appendix to the Jurisdictional Statement filed on behalf of Janet Reno in No. 98-405.

below, but to foreclose appellate review sought in this Court. "[W]hen a civil case becomes moot pending appellate adjudication, 'the established practice in the federal system is to reverse or vacate the judgment below and remand with a direction to dismiss.'" *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1058 (1997) (quoting *United States v. Munsingwear; Inc.*, 340 U.S. 36, 39 (1950)); *see Watkins v. Mabus*, 502 U.S. 954 (1991); *Burke v. Barnes*, 479 U.S. 361 (1987). If the School Board were correct that it would never use the plan again and the case were moot, the judgment below should be vacated and the case remanded with instructions to dismiss. Because the plan will be used, however, this Court should reach the merits of whether the district court on remand from this Court applied the appropriate legal standard to the evidence.

B. The Record Below Does Not Include Election Results Under the Plan.

After accusing the appellants of "gross factual distortions," Motion at 2, the School Board fails to identify any basis for such invective. Instead, the School Board uses its Counterstatement to argue that two elections held under the School Board's redistricting plan prove that the plan is not infected with discriminatory purpose. 2/ The School Board

2/ The School Board also seems to contend that because new precincts would have been required to formulate a School Board election plan that respected minority voting strength, use of the Police Jury plan must be automatically precleared for the School Board. The School Board's heavy emphasis on the "precinct splitting" issue is curious, because the district court had before it extensive stipulations of the parties on the timing and methods allowed for the creation of precincts in Louisiana. The School Board's contention that timing made it "impossible" for the Police Jury to establish new precincts to accommodate a different School Board redistricting plan, Motion at 4, is not supported by the record and is raised for the first time in the Motion. *See* Appendix to the Jurisdictional Statement in Nos. 95-1455 and 95-1508 at 69a-73a.

seeks to have this Court take "judicial notice" of the results of two sets of school board elections: the 1994 and 1998 elections. *See* Motion at 8. This Court, however, already has rejected in this case an effort by the School Board to inject into the record election results that post-date the adoption of the plan.

In March of 1996, the School Board filed in the earlier proceeding in this Court, Numbers 95-1455 and 95-1508, a Motion to Supplement Record attempting to bring to the Court's attention election results from earlier that month. The Court denied the motion. *Reno v. Bossier Parish School Board*, 517 U.S. 1154 (1996). On remand from this Court's decision in Numbers 95-1455 and 95-1508, the district court asked "whether the record needs to be reopened and whether, on what issues, and on what schedule additional briefs should be filed." Order dated August 13, 1997 in CA No. 94-1495. The parties agreed that the record should not be opened, 3/ however, and the district court concluded "that there is no need to reopen the evidentiary record. . . ." Order dated Sept. 9, 1997 in CA No. 94-1495.

The 1998 election results that the School Board argues are virtually dispositive never have been analyzed in any way or presented to the district court. The election took place on October 3, 1998, after the filing of the Jurisdictional Statements in this matter on September 4, 1998.

It would be unfair and highly irregular for the Court to take "judicial notice" on appeal of the results of elections held while these proceedings are still in progress. The judgment of the district court should be reviewed based on the evidence of record when the judgment was rendered. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 235 (1990); *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S.

3/ *See* Memorandum of Defendant-Intervenors George Price, et al., Concerning Remand Issues, at 1-2 (Sept. 5, 1997).

481, 486 n.3 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 n.16 (1970); *Russell v. Southard*, 53 U.S. 139 (1851); *Boone v. Chiles*, 35 U.S. (10 Pet.) 177, 208 (1836). That is the only way for an appellate court to review properly the election decisions of public officials; those officials did not have the later election results before them when they adopted the districting plan in question. *See Bush v. Vera*, 517 U.S. 952, 971 n.* (1996); *Ruiz v. City of Santa Maria*, 160 F.3d 543, 548 n.13 (9th Cir. 1998). This is particularly true where, as here, the pending litigation itself may have had an impact on the election. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 76 (1986); *Clark v. Calhoun County.*, 21 F.3d 92, 96 (5th Cir. 1994).

The School Board's contention that "appellate courts have routinely taken judicial notice of post-trial elections in voting rights cases," Motion at 7 n. 4, is not even supported by the cases cited. *Southern Christian Leadership Conference of Ala. v. Sessions*, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), *cert. denied*, 516 U.S. 1045 (1996) and *Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 (5th Cir. 1990) do not allow judicial notice by appellate tribunals of post-trial election results. In *Southern Christian Leadership Conference*, the Eleventh Circuit, in the course of reviewing a district court decision upholding Alabama's at-large election of trial judges, took judicial notice that one black judge had retired since the district court decision. *Southern Christian Leadership Conference*, 56 F.3d at 1287-88. The judge's retirement did not speak to the district court's analysis of electoral systems, did not impact the appellate court's review, and had nothing to do with a post-trial election. *Id.* at 1287-88. In *Westwego Citizens*, the Fifth Circuit did not take judicial notice of anything. There, the court reviewed a district court decision dismissing a challenge to Westwego's at-large election of aldermen. *Westwego Citizens*, 906 F.2d at 1042-43. The

Fifth Circuit remanded the case to the district court twice, *id.* at 1042-44, and held that the *district court* erred in failing to consider evidence of a subsequent election on the first remand. *Id.* at 1042. The court remanded the case again, and ordered the *district court* to hear evidence of subsequent elections. *Id.*

The School Board has not even sought leave to bring the election results into this record. Leave would be inappropriate in any event. As the Court has done before in this case and others, it should disregard election results after the redistricting decision at issue because they have no relevance to the School Board's "purpose" under Section 5 when it adopted the districting plan.

C. The District Court Failed To Assess the Evidence Under the Legal Standard for Weighing Discriminatory Intent Set Forth by This Court in *Arlington Heights*; Its More Restrictive Standard of Retrogressive Intent Is Not Appropriate Under Section 5.

The district court identified the legal standard it used to evaluate whether the School Board had demonstrated the lack of "purpose" to deny or abridge the right to vote on account of race or color in its districting plan: "The question we will answer. . . is whether the record disproves Bossier Parish's retrogressive intent in adopting the Jury plan." App. 4a. The School Board tries mightily to cast the district court's analysis of discriminatory intent as the type delineated by this Court in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Motion at 14 - 19. That possibility is contradicted by the district court's own repeated references to "retrogressive intent" as the measure for evaluating specific categories of evidence. Those references were reviewed at pages 16 - 17 of our Jurisdictional Statement, so will not be repeated here.

There is something very new about the School Board's argument in its Motion: For the first time, after extensive evidentiary proceedings in the district court, review by this Court, and remand proceedings before the district court, it argues that "retrogressive intent" is the proper standard for evaluating whether the districting plan is infected with a "purpose" to deny or abridge the right to vote on account of race within the meaning of Section 5.

The principal Supreme Court cases cited in part III of the School Board's Motion undercut its argument that "intent to retrogress" is the only form of intent outlawed by Section 5. The School Board bases much of its argument on the original case holding that retrogression is the only effect covered by Section 5. *Beer v. United States*, 425 U.S. 130, 141 (1976). The *Beer* Court acknowledged, however, that retrogressive effects are not the only denial or abridgment of the right to vote on account of race or color that Section 5 addresses:

> We conclude, therefore, that such an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so *discriminates on the basis of race or color as to violate the Constitution.*

Beer, 425 U.S. at 141 (emphasis added). Of course, one way to discriminate on the basis of race is to act with a discriminatory intent:

> An official action, whether an annexation or otherwise, taken for the *purpose of discriminating* against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute.

City of Richmond v. United States, 422 U.S. 358, 378-79 (1975) (emphasis added). Richmond's purpose, as found by the lower court, was "perpetuating white majority power to exclude Negroes from office through at-large elections." 422

U.S. at 373. *See also Hunter v. Underwood,* 471 U.S. 222 (1985).

In *Pleasant Grove v. United States*, 479 U.S. 462 (1987), the Court said that the City's purpose was *"perpetuat[ing]* Pleasant Grove as an enlarged enclave of white voters." 479 U.S. at 470 (emphasis added). Since the City had only two black voters out of a total population of 7,000, the black voting strength at the time of the decision was effectively zero. Given that state of affairs it is hard to see how the School Board can argue that Pleasant Grove was proposing to retrogress from its then-current status of blacks lacking any voting power. This Court explained that "[t]he failure to annex black areas while simultaneously annexing nonblack areas is highly significant in demonstrating that the [City's] annexations were purposefully designed to perpetuate [Pleasant Grove] as an enlarged enclave of white voters." *Id.* A purpose to stop or counteract the growth in black voting strength is not a retrogressive purpose but an intent to maintain the status quo — a status quo in which whites hold the power.

The novelty of the School Board's argument is underscored by its earlier, consistent position that retrogressive intent was not the only "purpose" covered by Section 5. This Court confirmed the agreement of the parties on that issue at oral argument in 1996:

> QUESTION: Well, what is your position here? Is it your position here that the only purpose that is relevant under Section 5 is purpose to cause retrogression, as distinct from purpose to discriminate by effecting a purposeful dilution?
>
> MR. CARVIN: Oh, no. No, not at all. I think that decision, the Court's decision in Richmond and Pleasant Grove has already decided that issue and, indeed, since it was stipulated that it didn't even have the effect of retrogression, you can obviously

assume they didn't have the purpose to retrogress, and this would have been a one-paragraph opinion.

QUESTION: But there could have been a purpose to dilute.

MR. CARVIN: Yes. That's the whole point.

Reno v. Bossier Parish Sch. Bd., Transcript of Oral Argument, Dec. 9, 1996, 1996 WL 718469 at *30-*31. The Price appellants agree with the position taken by the School Board in 1996.

CONCLUSION

For all of these reasons, and those described in the Jurisdictional Statements, we submit that the Court should note probable jurisdiction.

Respectfully submitted,

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(6) (4)

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Nos. 98-405 & 98-406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *ET AL.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

---

BRIEF OF APPELLANTS GEORGE PRICE, *ET AL.*

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QUESTION PRESENTED

Whether a redistricting plan submitted to the United States District Court for the District of Columbia under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, for a declaration that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," should be precleared even if infected with an unconstitutional, racially discriminatory purpose that is not retrogressive?

PARTIES TO THE PROCEEDINGS

The Defendant-Intervenors below, Appellants George Price, *et al.*, who are not listed in the caption are:

Leroy Harry
Thelma Harry
Clifford Doss
Odis Easter
Jerry Hawkins
Barbara Stevens King
Hurie Jones
Grover Cleveland Jaggers
Floyd Marshall
Rubie Fowler

All other parties are named in the caption.

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IN THE

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OCTOBER TERM, 1998

Nos. 98-405 & 98-406

JANET RENO, ATTORNEY GENERAL OF
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Appellant, and

GEORGE PRICE, *ET AL.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the
United States District Court
for the District of Columbia

BRIEF OF APPELLANTS GEORGE PRICE, *ET AL.*

OPINIONS BELOW

The decision of the United States District Court for the District of Columbia ("D.C. District Court") that is the subject of these appeals is reported at 7 F. Supp. 2d 29

(D.D.C. 1998) and is reprinted at App. 1a-28a.[1] An earlier decision of the D.C. District Court in this case is reported at 907 F. Supp. 434 (D.D.C. 1995) (App. 78a-144a); this Court's decision vacating and remanding that earlier decision is reported at 117 S. Ct. 1491 (1997) (App. 29a-77a).

JURISDICTION

The D.C. District Court had jurisdiction pursuant to 42 U.S.C. § 1973c. It entered the judgment at issue on May 4, 1998. George Price, *et al.*, and Janet Reno filed timely notices of appeal on July 6, 1998 and filed timely jurisdictional statements on September 4, 1998. This Court noted probable jurisdiction on January 22, 1999. This Court's jurisdiction is based on 42 U.S.C. § 1973c.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Section 1 of the Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, is reprinted at App. 244a-246a.

STATEMENT

Because the Bossier Parish School Board ("Board") is a jurisdiction subject to the preclearance requirements of §5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, it is required to obtain the approval either of the Attorney General of the United States or of the D.C. District Court before implementing any changes to a "voting qualification or

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1 Citations to "App." refer to the separately bound appendix to the Jurisdictional Statement filed on behalf of Janet Reno in No. 98-405. Citations to "J.A." refer to the Joint Appendix filed on March 5, 1999.

prerequisite to voting, or standard, practice, or procedure." App. 244a. Because the 1990 census revealed wide population disparities among its election districts, the Board proceeded to redraw its election districts to meet the mandate of this Court's one-person -- one-vote decisions. *Id.* at 30a. The Board seeks in this declaratory judgment action a determination that its redistricting plan adopted following the 1990 census "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 245a).

This is the second time that the Court has noted probable jurisdiction in this case. In 1997, this Court vacated and remanded the first judgment of the D.C. District Court preclearing the Board's proposed redistricting plan. Although the D.C. District Court found on remand "powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts" and a "tenacious determination to maintain the status quo," in which all election districts were majority white, App. 7a, it once again precleared the 12-of-12 majority white election district plan.

A. This Court's Decision Vacating and Remanding the First Declaratory Judgment.

This Court decided two questions in its review of the D.C. District Court's first judgment granting preclearance of the Board's proposed redistricting plan:

> (i) whether preclearance must be denied under § 5 whenever a covered jurisdiction's new voting "standard, practice, or procedure" violates § 2 [of the Voting Rights Act]; and
>
> (ii) whether evidence that a new "standard, practice, or procedure" has a dilutive impact is always irrelevant to the inquiry whether the covered jurisdiction acted with "the purpose . . . of denying or abridging the right to vote on account of race or color" under § 5.

App. 29a-30a.

The Court first reviewed the Board's process of redistricting following the 1990 census:

> [The Board] considered, and initially rejected, the redistricting plan that had been recently adopted by the Bossier Parish Police Jury, the parish's primary governing body (the Jury plan), to govern its own elections. Just months before, the Attorney General had precleared the Jury plan, which also contained 12 districts. . . . (Stipulations, ¶ 68). None of the 12 districts in the Board's existing plan or in the Jury plan contained a majority of black residents. . . . (Stipulations, ¶ 82) (under 1990 population statistics in the Board's existing districts, the three districts with highest black concentrations contain 46.63%, 43.79%, and 30.13% black residents, respectively);. . . . (Stipulations, ¶ 59) (population statistics for Jury plan, with none of the plan's 12 districts containing a black majority). Because the Board's adoption of the Jury plan would have maintained the status quo regarding the number of black-majority districts, the parties stipulated that the Jury plan was not "retrogressive.". . . (Stipulations, ¶ 252). . . . Appellant George Price, president of the local chapter of the NAACP, presented the Board with a second option — a plan that created two districts each containing not only a majority of black residents, but a majority of voting-age black residents. . . . (Stipulations, ¶ 98). Over vocal opposition from local residents, black and white alike, the Board voted to adopt the Jury plan as its own. . . . .

App. 30a-31a (citations omitted).

The Court recounted that the Attorney General rejected the Board's proposed redistricting plan when it was submitted for preclearance, on grounds that it would violate § 2 of the Voting Rights Act, 42 U.S.C. § 1973, "because it 'unnecessarily limit[ed] the opportunity for minority voters to elect their candidates of choice.'" App. 32a. The Attorney General had concluded that black residents are sufficiently numerous and geographically compact to form a majority in two of the 12 election districts. *Id.* at 31a-32a.

While the Court concluded that a voting change should not automatically be denied preclearance under § 5 of the Voting Rights Act, because the change would violate § 2 of the Act, App. 33a-45a, it held that evidence of minority vote dilution should not be excluded in a § 5 preclearance proceeding. A remand was necessary because it was not clear whether the District Court considered proffered evidence that would be relevant to a § 2 claim in order to determine whether the redistricting plan has the "purpose . . . of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 45a-51a).

The Court commended to the D.C. District Court on remand the factors relevant to determining discriminatory intent for purposes of Fourteenth Amendment analysis, outlined in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265 (1977):

> The "important starting point" for assessing discriminatory intent under *Arlington Heights* is "the impact of the official action whether it 'bears more heavily on one race than another.'" 429 U.S., at 266 (citing *Washington* v. *Davis*, 426 U.S. 229, 242 (1976)). In a § 5 case, "impact" might include a plan's retrogressive effect and, for the reasons discussed above, its dilutive impact. Other considerations relevant to the purpose inquiry include, among other things, "the historical background of the [jurisdiction's] decision"; "[t]he specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence"; and "[t]he legislative or administrative history, especially . . . [any] contemporary statements by members of the decisionmaking body." *Id.*, at 268.

App. 49a.

The Court concluded:

> Because we are not satisfied that the District Court considered evidence of the dilutive impact of the Board's

> redistricting plan, we vacate this aspect of the District Court's opinion. The District Court will have the opportunity to apply the *Arlington Heights* test on remand as well as to address appellants' additional arguments that it erred in refusing to consider evidence that the Board was in violation of an ongoing injunction "to 'remedy any remaining vestiges of [a] dual [school] system'," 907 F. Supp., at 449, n. 18.

App. 50a-51a.

The Court noted that it was leaving "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent. . . . Reserving this question is particularly appropriate when, as in this case, it was not squarely addressed by the decision below or in the parties' briefs on appeal. . . . The existence of such a [non-retrogressive but nevertheless discriminatory] purpose, and its relevance to § 5, are issues to be decided on remand." App. 45a-46a (citations omitted).

B. The District Court's Analysis on Remand.

Soon after this Court issued its mandate, the three-judge D.C. District Court called for short memoranda from the parties setting forth their views of what further proceedings should be required.[2] The court required the parties to state "whether the record needs to be re-opened" and whether additional briefs were required.[3] The record was not re-opened on remand to receive the results of the School Board elections held in March and April 1996 under the Jury plan, because the parties agreed "that there is no need to reopen the

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2 Order filed Aug. 13, 1997, Civ. No. 94-1495. On remand, United States District Judge James Robertson was assigned to fill the vacancy on the panel left by the death of Judge Charles Richey. The panel on remand accordingly consisted of Judge Robertson, District Judge Gladys Kessler, and Circuit Judge Laurence H. Silberman.

3 *Id.*

evidentiary record."[4] In fact, this Court had denied a Board motion to supplement the record on the first appeal with the 1996 election results. *Reno* v. *Bossier Parish Sch. Bd.*, 517 U.S. 1154 (1996). The court set a schedule for further briefing on the application of the *Arlington Heights* criteria to the largely stipulated record previously developed and "on the relevance to Section 5 of a non-retrogressive, but nevertheless discriminatory, 'purpose[.]'"[5]

The D.C. District Court received the parties' briefs on those issues, but ostensibly "decline[d]" to address whether §5's purpose prong encompasses a search for discriminatory intent beyond retrogressive intent. App. 3a. The court searched the record, however, only for retrogressive intent: "The question we will answer . . . is whether the record disproves Bossier Parish's *retrogressive intent* in adopting the Jury plan." *Id.* at 4a (emphasis added). The court applied the *Arlington Heights* factors to this limited question:

1. Effect of the Plan. The D.C. District Court pointed out that "[t]he first *Arlington Heights* factor is 'the impact of the official action -- whether it bears more heavily on one race than another.'" App. 5a, quoting *Arlington Heights*, 429 U.S. at 266. The court noted the argument of Mr. Price and the other intervening defendants that the redistricting worsened the position of black voters by diminishing slightly the percentage of black voting age population in two of the 12 election districts, but concluded that the parties had "stipulated the point away" by agreeing that these reductions are "*de minimis*." App. 6a. The court next addressed "other allegedly dilutive impacts of the Jury plan": "that some of the new districts have no schools, that the plan ignores attendance boundaries, that it does not respect communities of interest, that there is one outlandishly large district, that several of them are not compact, that there is a lack of contiguity, and that the population deviations resulting from

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4 Order filed Sept. 9, 1997, Civ. No. 94-1495.

5 *Id.*, quoting *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471, 486 (1997) (App. 46a).

the jury plan are greater than the limits (± 5%) imposed by Louisiana law." *Id.* The court conceded that "[t]wo of those points -- failure to respect communities of interest and cutting across attendance boundaries -- might support a finding of *retrogressive intent*," *id.* (emphasis added), but thought the point "too theoretical, and too attenuated, to be probative." *Id.*

2. Historical Background of the Adoption of the Plan. The D.C. District Court characterized its previous findings on the historical background of the Jury plan as "provid[ing] powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts." *Id.* at 7a. In this context, the panel majority addressed for the first time the history of "the school board's resistance to court-ordered desegregation, and particularly its failure to comply with the order of the United States District Court in *Lemon* v. *Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd*, 370 F.2d 847 (5th Cir. 1967), *cert. denied*, 388 U.S. 911 (1967), that it maintain a bi-racial committee to 'recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish.'" App. 7a, quoting Stipulation ¶ 111. The court found that the intent proved by that history "is a tenacious determination to maintain the status quo." *Id.* This, however, the court found "is not enough to rebut the School Board's *prima facie* showing that it did not intend *retrogression*." *Id.* (emphasis added).

The D.C. District Court conducted only a summary review of the other *Arlington Heights* factors. The pattern on each is the same: The court found fact after fact that supports the conclusion that the Jury plan was adopted with racial animus, but minimized that evidence because the Jury plan did not set back even further the voting position of the black citizens of Bossier Parish.

3. Specific Sequence of Events Leading to the Decision to Adopt the Jury Plan. The D.C. District Court found that the sequence of events "does tend to demonstrate

the school board's resistance to the NAACP plan; it does not demonstrate *retrogressive intent*." *Id.* (emphasis added).

4. Board Departures from Normal Practice. The court referenced its earlier review of evidence "tending to establish that the board departed from its normal practices," and found that it "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," but concluded that such "is not evidence of *retrogressive intent*." *Id.* (emphasis added).

5. Contemporary Statements of Participants. The D.C. District Court referred back to its earlier findings concerning such statements, and concluded that "[t]hey do not establish *retrogressive intent*." *Id.* at 8a (emphasis added).

Judge Gladys Kessler once again dissented, because she remained convinced that the Board's decision to adopt the Jury plan was motivated by discriminatory purpose. *Id.* at 12a. Judge Kessler pointed out that her "colleagues have limited their § 5 purpose inquiry to a search for intent to retrogress and have declined to consider whether the § 5 inquiry ever extends beyond that search for retrogressive intent." *Id.* at 13a. That analysis, in Judge Kessler's view, "avoid[ed] carrying out the Supreme Court's directive to (1) inquire into the existence of 'some nonretrogressive, but nevertheless discriminatory, purpose'; and (2) determine the relevance of such a purpose (should one exist) to [the] § 5 inquiry." *Id.* (internal quotation omitted).

Since the parties agreed that the Board's proposed redistricting plan would not have a retrogressive effect, Judge Kessler first addressed whether a nonretrogressive but nonetheless discriminatory purpose to deny or abridge the right to vote on account of race or color warrants denial of preclearance under § 5. She reasoned that if the court "were to deny preclearance under § 5 only to those new plans enacted specifically with a retrogressive purpose, . . . [it] would commit [itself] to granting § 5 preclearance to a

'resistant' jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength." *Id.* at 17a. Because "a construction of § 5 that limits its purpose inquiry to a search for retrogressive intent could require us to preclear nonretrogressive but *nevertheless unconstitutional* voting plans," *id.* (emphasis in original), Judge Kessler concluded that the purpose inquiry does extend beyond a search for retrogressive intent.

That conclusion prompted Judge Kessler to review again the full range of the evidence demonstrating the real reasons why the Board adopted the Jury plan. She cited the Board's admission in a stipulation that it is "'obvious that a reasonably compact black-majority district could be drawn in Bossier City.'" *Id.* at 19a, quoting Stipulation ¶ 36. Stipulations also demonstrate that the Parish is racially polarized, *id.* at 19a, citing Stipulations ¶¶181-96, and "that no black person ha[d] been elected to the Bossier Parish School Board despite the fact that 20.1% of the population is black." *Id.* (footnote omitted), citing Stipulations ¶¶153, 5. Bossier Parish has a history, recounted by Judge Kessler, of official and voting-related discrimination including implementation by the State of Louisiana of procedures since the adoption of the Voting Rights Act that dilute minority voting strength. *Id.* at 20a-21a. Reviewing her previous assessment of the *Arlington Heights* factors on these facts, Judge Kessler reached the same conclusion:

> [T]he only conclusion that can be drawn from the evidence is that the Bossier School Board acted with discriminatory purpose. The adopted plan has a substantial negative impact on the black citizens of Bossier Parish. The sequence of events leading up to the decision show conclusively how the School Board excluded the black community from the redistricting process and rushed to adopt the Police Jury plan only when faced with an alternative plan that provided for black representation. The plan itself ignores and

> overrides a number of the School Board's normal paramount interests. And the statements of some School Board members certainly lend strength to the other evidence. . . . We cannot blind ourselves to the reality of the situation and the record before us.

App. 23a (citation omitted).

These appeals followed.

SUMMARY OF THE ARGUMENT

Section 5 of the Voting Rights Act calls for a declaratory judgment by the D.C. District Court preclearing a voting change where the covered jurisdiction can establish that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Section 5 echoes the words of the Fifteenth Amendment to the Constitution, which is the authority for Congress' enactment of the Voting Rights Act: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

This Court's cases reviewing the D.C. District Court's § 5 decisions establish core principles supporting the conclusion that the discriminatory "purpose" that bars preclearance of a voting change under § 5 is as broad as the discrimination prohibited by the Constitution:

- The "purpose" and "effect" inquiries both must be conducted in order to determine whether a proposed voting change passes muster under § 5.
- Even if the effect of a voting change is not retrogressive, the proposed change will not be precleared if it was motivated by a discriminatory, unconstitutional purpose.
- The test for determining whether a voting change was motivated by a discriminatory purpose is set forth in *Arlington Heights*.

Consistent with these principles, on remand the D.C. District Court should have applied the *Arlington Heights* factors to determine whether any racially discriminatory purpose to deny or abridge the right to vote motivated the redistricting plan submitted by the Bossier Parish School Board, without restricting its analysis to a search for "retrogressive intent." The D.C. District Court applied the *Arlington Heights* factors, but in its analysis of each *Arlington Heights* element it addressed only whether the evidence demonstrated "retrogressive intent." *See* App. 5a-8a. That limitation should not be read into the "purpose" analysis under § 5 because it has no foundation in the language or history of the statute, or in the § 5 decisions of this Court. Indeed, the Court has decided "purpose" cases that would have had a different result if its analysis had been limited to a search for purpose to retrogress. Moreover, limiting "purpose" to "retrogressive intent" would require the Attorney General and the D.C. District Court to preclear voting changes that violate the Constitution.

The D.C. District Court found that the Board's adoption of the Jury plan violated traditional districting principles and reflected a strong resolve to maintain 12-of-12 majority-white election districts. The Board sought through its redistricting to maintain a status quo characterized by non-compliance with its unsatisfied desegregation obligations. Under a proper application of the *Arlington Heights* analysis, these conclusions warrant reversal of the judgment below and denial of preclearance of Bossier's redistricting plan.

ARGUMENT

I. THE WORDS OF § 5, AND DECISIONS OF THIS COURT APPLYING THEM, MAKE CLEAR THAT THE "PURPOSE . . . OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE OR COLOR" IS ANY UNCONSTITUTIONAL, RACIALLY DISCRIMINATORY PURPOSE.

The critical error of the D.C. District Court on remand was in its failure to recognize the many cases holding that

consideration of purpose is not limited to a search for retrogression. The analysis of "purpose" and "effect" are not the same, and both must be conducted in a declaratory judgment action seeking preclearance of a voting change: "By describing the elements of discriminatory purpose and effect in the conjunctive, Congress plainly intended that a voting practice not be precleared unless *both* discriminatory purpose and effect are absent." *City of Rome* v. *United States*, 446 U.S. 156, 172 (1980) (emphasis in original); *accord Lopez* v. *Monterey County*, 119 S. Ct. 693, 703 (1999) ("once a jurisdiction has been designated, [§ 5 of] the Act may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws in that jurisdiction") (emphasis in original). Giving meaning to both "purpose" and "effect" implements the common-sense principle of statutory construction that sections of a statute generally should be read to give effect, if possible, to every clause. *Heckler* v. *Chaney*, 470 U.S. 821, 829 (1985) (finding distinct applications for two provisions of Administrative Procedure Act).[6]

This Court's cases applying the "purpose" prong of § 5 confirm that the purpose analysis is not the same as the effect test, and is not limited to retrogressive intent. The D.C. District Court's limitation of purpose to retrogressive intent would require preclearance of voting changes adopted with an unconstitutional discriminatory purpose.

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[6] *See also United States* v. *Albertini*, 472 U.S. 675, 682-83 (1985) (declining to read statute in way that renders one paragraph superfluous); *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955) (quoting *Montclair* v. *Ramsdell*, 107 U.S. 147, 152 (1883) and refusing to "emasculate an entire section" of Immigration and Nationality Act because it is the Court's "duty 'to give effect, if possible, to every clause and word of a statute'").

A. In Cases Evaluating Whether a Voting Change Satisfies § 5, This Court Has Examined the Full Scope of Discriminatory Purpose that Could Violate the Constitution.

This Court's § 5 decisions are based on the principle that "[t]he Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 315 (1966) (footnote omitted). In *Katzenbach*, the Court upheld the constitutionality of challenged sections of the Voting Rights Act, including § 5, as a valid exercise of Congress' authority under the Fifteenth Amendment. *Id.* at 327. Section 5 is an appropriate exercise of congressional power because a judicial determination to preclear a voting change "is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment." *Id.* at 335. An analysis of whether a proposed voting change reflects a discriminatory purpose that would offend the Constitution is the touchstone for preclearance, since "[t]he Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment." *Id.* at 334.

A determination whether a proposed voting change "will not have the effect of denying or abridging the right to vote on account of race or color" calls for some prediction, as Congress' use of the future tense suggests, of how a voting change will operate in practice. Where redistricting is at issue, "a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the 'effect' of diluting or abridging the right to vote on account of race within the meaning of § 5." *Beer* v. *United States*, 425 U.S. 130, 141 (1976). The Court accordingly concluded in *Beer* that a new apportionment plan for the New Orleans City Council did not have the "effect" of denying or abridging the right to vote on account of race or color, since the old apportionment plan had five councilmanic districts, in one of which blacks were a majority of the population and about

half of the registered voters. *Id.* at 135. Under the new post-1970-census plan, two districts had black population majorities and one district had a black voter majority. *Id.* at 135-36.

The key to the Court's analysis in *Beer* is the selection of the baseline for comparison with the new plan to determine whether the new plan will have the "effect" of denying or abridging the right to vote on account of race or color. The Court rejected the proposition that comparison of the "mathematical potential" of black majority districts and "predicted reality" under the new plan was appropriate. *Id.* at 137. Instead, the Court held that the "effect" prong is properly measured in the redistricting context by comparing the old and proposed new plans. Where the new plan is an "ameliorative new legislative apportionment," it does not have the "effect" of denying or abridging the right to vote. *Id.* at 141.

The Court carefully explained in its *Beer* holding that the analysis of "effect" did not change the principle that voting changes in violation of the Constitution should be denied preclearance under the "purpose" prong of § 5: "We conclude, therefore, that such an ameliorative new legislative apportionment cannot violate § 5 *unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution.*" *Id.* at 141 (emphasis added). The Court explained why even a voting change with no retrogressive effect should be rejected if it manifests a discriminatory purpose: "It is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." *Id.* at 142 n.14. Because facts demonstrating discriminatory purpose were not present in *Beer*, and the effect of the redistricting plan was not retrogressive, preclearance was granted.

Beer built on the Court's holding in *City of Richmond* v. *United States* 422 U.S. 358 (1975), in which the D.C. District Court had refused to preclear annexation of an area of

Chesterfield County to the City of Richmond, Virginia, on grounds that it was discriminatory both in its purpose and effect. *City of Richmond* v. *United States*, 376 F. Supp. 1344 (D.D.C. 1974), *vacated*, 422 U.S. 358 (1975). The D.C. District Court relied on evidence that the City initially proceeded without seeking the preclearance mandated by § 5, that no legitimate purpose for annexation had been shown, and that a proposed post-election ward system had not minimized to the extent possible the dilution of black voting strength that would be caused by annexing an area with a more substantial proportion of white voters than were present in the City before annexation. *City of Richmond*, 422 U.S. at 367.

This Court held in *City of Richmond* that an annexation has the effect of denying or abridging the right to vote on account of race or color only if the resulting election system fails to fairly reflect the voting strength of the black community as it exists after the annexation; the Court rejected the notion that an annexation should be rejected for preclearance because the black community will lose relative influence in the City. *Id.* at 370-72. Although the Court concluded that the effect of the annexation did not violate § 5, it went on to weigh whether it had a racially discriminatory purpose. *Id.* at 372. The Court remanded for further proceedings to consider possible legitimate, non-discriminatory reasons for the annexation, a remand that would have been meaningless if the absence of retrogression were dispositive. The Court made very clear in *City of Richmond* why the inquiry into purpose is required, even if a voting change is not retrogressive:

> We have held that an annexation reducing the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation is not a statutory violation as long as the post-annexation electoral system fairly recognizes the minority's political potential. If this is so, it may be asked how it could be forbidden by § 5 to have the purpose and intent of achieving only what is a perfectly legal result under that

section and why we need remand for further proceedings with respect to purpose alone. The answer is plain, and we need not labor it. An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. Congress surely has the power to prevent such gross racial slurs, the only point of which is "to despoil colored citizens, and only colored citizens, of their theretofore enjoyed voting rights." *Gomillion* v. *Lightfoot*, 364 U.S. 339, 347 (1960). Annexations animated by such a purpose have no credentials whatsoever; for "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end. . . ." *Western Union Telegraph Co.* v. *Foster*, 247 U.S. 105, 114 (1918); *Gomillion* v. *Lightfoot*, *supra*, at 347. An annexation proved to be of this kind and not proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be.

City of Richmond, 422 U.S. at 378-79. *Accord Miller* v. *Johnson*, 515 U.S. 900, 924 (1995) ("[a]meliorative changes, even if they fall short of what might be accomplished in terms of increasing minority representation, cannot be found to violate section 5 unless they so discriminate on the basis of race or color as to violate the Constitution") (citation omitted); *City of Port Arthur* v. *United States*, 459 U.S. 159, 168 (1982) (even an electoral scheme that "might otherwise be said to reflect the political strength of the minority community . . . would nevertheless be invalid if adopted for racially discriminatory purposes, *i.e.*, if [a] majority-vote requirement . . . had been imposed for the purpose of excluding blacks from any realistic opportunity to represent those districts or to exercise any influence on Council members elected to those positions. *City of Richmond* v. *United States*, 422 U.S., at 378-379").

This Court's affirmances after *Beer* and *City of Richmond* in *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987) and *Busbee* v. *Smith*, 459 U.S. 1166 (1983), further establish that the discriminatory "purpose" prohibited by § 5 is not limited to retrogressive intent. The voting changes at issue in those cases were not retrogressive, but were nonetheless rejected because they were infected with discriminatory purpose.

Pleasant Grove, like *Richmond*, was an annexation case. The City of Pleasant Grove, Alabama, was "an all-white enclave in an otherwise racially mixed area of Alabama." *City of Pleasant Grove*, 479 U.S. at 465 (citation omitted). Pleasant Grove annexed two parcels of land, one of which was uninhabited and one of which was home to an extended white family. *Id.* at 465-66. While these annexations were in process, Pleasant Grove rejected the annexation of an adjacent black neighborhood and attempted to cut off that area's fire protection and paramedic services. *Id.* at 466. The D.C. District Court found no prohibited effect under § 5, because it could not be said that annexation of a white area that did not alter the racial composition of the voting population had a retrogressive "effect" as described in *Beer*. *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458-59 (D.D.C. 1983). The court found, however, that summary judgment preclearing the annexation could not be granted because of evidence of discriminatory purpose under the *Arlington Heights* analysis. The City's history of discriminatory policies and practices included ordinances "to restrict colored property," opposition to a "colored housing project," refusal to annex black residential areas, and maintenance of a segregated school system. *Id.* at 1456-57. After trial on the merits, the D.C. District Court denied preclearance based on the purpose prong alone. *City of Pleasant Grove* v. *United States*, 623 F. Supp. 782 (D.D.C. 1985), *aff'd*, 479 U.S. 462 (1987).

This Court affirmed, holding that the trial court's findings were not clearly erroneous that Pleasant Grove's economic justifications for treating adjacent white and black areas

differently were flawed pretexts developed after the fact. *Pleasant Grove*, 479 U.S. at 470. The Court specifically rejected Pleasant Grove's argument that "since the annexation could not possibly have caused an impermissible effect on black voting, it makes no sense to say that appellant had a discriminatory purpose." *Id.* at 471. A covered jurisdiction cannot "short-circuit a purpose inquiry under § 5 by arguing that the intended result was not impermissible under an objective effects inquiry." *Id.* at 471 n.11, citing *City of Richmond*, 422 U.S. at 378-79. Section 5 prohibits voting changes with discriminatory purposes beyond the dilution of existing minority voting strength, the Court concluded, because:

> One means of thwarting this process [of racial integration] is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength. Cf. *City of Richmond, supra,* at 378. To hold otherwise would make appellant's extraordinary success in resisting integration thus far a shield for further resistance. Nothing could be further from the purposes of the Voting Rights Act.

City of Pleasant Grove, 479 U.S. at 472.

In *Busbee* v. *Smith*, 459 U.S. 1166, this Court summarily affirmed the D.C. District Court's conclusion that the Georgia congressional redistricting following the 1980 census could not be precleared under § 5 because it was tainted with discriminatory purpose, although "the voting plan does not have a discriminatory effect, as that term has been construed under the Voting Rights Act." *Busbee* v. *Smith*, 549 F. Supp. 494, 516 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983) (relying on *Beer*, 425 U.S. at 141). The D.C. District Court found no retrogressive effect, because there was one majority black congressional district in the Atlanta area in both the previous and proposed plans; that district gained a few percentage points in black population under the proposed plan. *Busbee*, 549 F. Supp. at 498, 516. The

court's findings of discriminatory purpose, as in *Pleasant Grove*, were based on application of the *Arlington Heights* factors. *Id.* at 517. The court found overt racial statements (such as statements by the Chairman of the House Permanent Standing Committee on Legislative and Congressional Reapportionment opposing drawing of a "nigger district," 549 F. Supp. at 512); the conscious minimization of black voting strength in the Atlanta area (especially as contrasted with efforts to consolidate communities with consistent interests in other parts of the state, such as the mountains of North Georgia); a history of invidious discrimination; and the absence of legitimate non-racial reasons for the plan. *Id.* The process was questionable as well. By excluding black legislators "solely because of their race . . . from the final-decision making process," -- a legislative conference committee -- and entrusting those decisions to "whites who, for racially discriminatory reasons, opposed the creation of a district which might allow black voters an opportunity to elect a candidate of their choice," the process failed to function in a nondiscriminatory manner. *Id.* at 518.

The D.C. District Court stressed that it expressed no view as to what congressional redistricting plan the Georgia legislature should adopt, and that its "decision does not require the State of Georgia to maximize minority voting strength in the Atlanta area." *Id.* at 518. The court concluded: "The State is free to draw the districts pursuant to whatever criteria it deems appropriate so long as the effect is not racially discriminatory and so long as racially discriminatory purpose is absent from the process." *Id.*

On appeal, the State of Georgia appellants specifically sought this Court's review of whether a voting plan that lacks the effect of diminishing black voting strength can be held to have a discriminatory purpose.[7] This Court summarily affirmed. *Busbee*, 459 U.S. 1166.

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[7] The questions presented in *Busbee* were:

A. Whether a Congressional reapportionment plan that has no discriminatory effect, that enhances black voting strength, and that provides blacks with equal access to the political process can be deemed to violate Section 5 of the Voting Rights Act.

B. Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act.

Jurisdictional Statement at i, *Busbee* v. *Smith*, 459 U.S. 1166.

B. Until This Case, the D.C. District Court Had Not Limited the Analysis of "Purpose" Under § 5 to Intent to Retrogress.

The D.C. District Court in numerous § 5 cases since *Beer*-- in addition to *Busbee* and *City of Pleasant Grove*-- has evaluated whether a proposed voting change has a retrogressive effect; regardless of that result, the court also has considered whether the proposed change is the product of a discriminatory purpose, with *Arlington Heights* and *Washington* v. *Davis* setting the framework for the analysis. For example, where a voting change -- the creation of new judgeships -- was found not to have a retrogressive effect, the D.C. District Court has granted summary judgment to a covered jurisdiction on the effect prong of the analysis, but has permitted the United States to conduct discovery into purpose in order to develop evidence regarding the *Arlington Heights* factors. *Arizona* v. *Reno*, 887 F. Supp. 318 (D.D.C. 1995), *appeal dismissed*, 516 U.S. 1155 (1996). *Accord Georgia* v. *Reno*, 881 F. Supp. 7, 11, 14 (D.D.C.), *aff'd sub. nom. Brooks* v. *Georgia*, 516 U.S. 1021 (1995) (finding neither effect nor purpose in creation of new judgeships); *Texas* v. *United States*, 866 F. Supp. 20, 27-28 (D.D.C. 1994) (summary judgment denied on both purpose and effect prongs because of disputed facts concerning change from elected to appointed governing board).[8]

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[8] *Accord County Council of Sumter County* v. *United States*, 596 F. Supp. 35 (D.D.C. 1984) (change to at-large election system for county council had both the purpose and effect of denying or

Since *Beer*, the D.C. District Court has measured the effect prong by analyzing retrogression, but, until the decision below, the D.C. District Court had never, so far as we are able to discover, restricted a § 5 "purpose" analysis to a search for retrogressive intent. *See New York* v. *United States*, 874 F. Supp. 394, 399-400 (D.D.C. 1994) (creation of new judgeships precleared; "preclearance under section 5 represents nothing more than an official determination that a proposed voting change will not diminish the position of minority voters and that it was not undertaken for a discriminatory purpose"); *Texas* v. *United States*, 785 F. Supp. 201, 203-04 (D.D.C. 1992) ("Plaintiff's burden in a suit for declaratory judgment under section 5 is twofold: First, it must demonstrate that the redistricting plan does not lead to a retrogression in the position of racial minorities; second, the State must demonstrate that the plan is free of a discriminatory purpose. Even if a change is 'ameliorative,' it may violate Section 5 if it 'so discriminates on the basis of race or color as to violate the Constitution'" (quoting *Beer*, 425 U.S. at 141)).

C. The "Retrogression" Limitation on the "Purpose" Analysis Imposed by the Court Below Is Inconsistent with the Intent of Congress.

The court below ruled that "[t]he language of *Beer* [defining retrogression in terms of a comparison of an old election plan to the proposed plan] is just as applicable to the 'purpose' inquiry as to the 'effect' inquiry." App. 4a. To be sure, this Court explained in *Beer* that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, 425 U.S. at 141; *see City of Lockhart* v. *United States*, 460 U.S. 125, 133

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abridging right to vote based on race); *Hale County* v. *United States*, 496 F. Supp. 1206, 1218 (D.D.C. 1980) (change to at-large elections for the Hale County, Alabama county commission had both the purpose and effect of denying or abridging the right to vote on account of race; *Arlington Heights* factors applied).

(1983) ("Section 5 was intended to halt actual retrogression in minority voting strength without regard for the legality under state law of the practices already in effect"; voting change evaluated only for retrogressive effect, since purpose inquiry had been bifurcated by D.C. District Court) (footnote omitted). *Beer* and *Lockhart* both addressed only the "effect" prong of § 5, so these broad statements can most reasonably be understood to describe the particular analysis required to determine whether a voting change has the prohibited "effect."

More fundamentally, the Court's statement in *Beer* could not fairly be read to suggest that in adopting § 5 Congress intended only to halt new stratagems that would actually diminish meaningful participation in elections by black voters as compared to some earlier level. Voter registration and election participation by black voters in some parts of this country in 1965 was almost non-existent. This Court in *Katzenbach* summarized the evidence that was before the Congress when it first enacted the Voting Rights Act:

> According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

Katzenbach, 383 U.S. at 313.

Congress made clear through its adoption of multiple means of combating discrimination in voting that it knew the job would be massive. Congress authorized new kinds of litigation to secure voting rights, 42 U.S.C. §§ 1973, 1973a; suspended the use of tests and devices in determining eligibility to vote in certain states and political subdivisions where voter registration and participation were very low, 42

U.S.C. § 1973b; and imposed the preclearance requirement in § 5 for new voting qualifications or prerequisites.

There is no evidence that Congress thought that the enactment of these tools through passage of the Voting Rights Act would create such a level baseline of nondiscriminatory voting opportunity that Congress intended in § 5 only to bar deterioration in the opportunity of blacks to vote. The perpetuation of discrimination through new devices with the purpose of keeping black citizens from participating as voters, even if the new devices were merely as effective as the old ones, would insure that the promise of the Fifteenth Amendment could not become a reality. It is in this context that this Court, in its voting rights decision closest to the date of the passage of the Act, observed that numerous discriminatory requirements and stratagems to bar black citizens from voting had been outlawed by federal courts, but "some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests *designed to prolong the existing disparity* between white and Negro registration." *Katzenbach*, 383 U.S. at 314 (footnote omitted) (emphasis added). *Accord Rogers* v. *Lodge*, 458 U.S. 613, 625 (1982) (affirming denial of § 5 preclearance of voting change due to purposeful discrimination evident in part through "practices which, though neutral on their face, serve to maintain the status quo"). The Voting Rights Act was designed to combat a discriminatory status quo as well as to avoid future retrogression.

Congress has not limited the overall reach of § 5 to retrogressive voting changes as the circumstances of black and other minority voters have improved. In the reauthorization of the Voting Rights Act in 1982, the Committee on the Judiciary of the House of Representatives found "that there has been much progress in increasing registration and voting rates for minorities since the passage of the Voting Rights Act of 1965," but that "these gains are fragile. The registration figures for minorities remain substantially lower than those for white voters." H.R. Rep.

No. 97-227 at 7 (1981). In light of that evidence, and evidence of continued discrimination in registration and voting through a variety of mechanisms, the Judiciary Committee recommended and the Congress approved the extension of § 5, the "speedy review mechanism to correct existing Fifteenth Amendment violations and to prevent future voting discrimination," with no change in the language of § 5 that would limit "purpose" to purpose to retrogress. *Id.* at 13.

D. Limiting the Purpose Inquiry Under § 5 to Retrogressive Intent Would Require Preclearance of Voting Changes that Violate the Constitution.

This Court and the Congress have linked § 5 preclearance to the goal of barring voting changes that discriminate on the basis of race or color. It takes no imagination to identify voting changes that should be denied preclearance under § 5 because of their discriminatory purpose, but that would not be halted if the search for purpose is limited to "purpose to retrogress." This Court has held that certain voting practices or requirements violate the Fourteenth or Fifteenth Amendment although they do not present "retrogression" in anything like the numerical sense addressed in *Beer*. For example, if a covered jurisdiction were to seek a declaratory judgment preclearing a rule requiring candidates to be identified by race on the ballot, that change should be denied preclearance. Such a requirement violates the equal protection clause of the Fourteenth Amendment. *See Anderson* v. *Martin*, 375 U.S. 399, 402 (1964). Yet that type of voting change is not readily analyzed under a retrogression test. Fact issues could be extensive in litigation over whether listing of race on the ballot would have an impact on voting patterns. Regardless of whether such a requirement would gain or lose votes for candidates by race, it should be denied preclearance because it represents government's endorsement of consideration of race in the casting of ballots. *Id.*

If a covered jurisdiction proposed preclearance of a rule requiring the disenfranchisement of misdemeanants convicted of crimes involving moral turpitude, for example,

preclearance should be denied if the jurisdiction does not demonstrate the absence of a racially invidious intent to limit the eligibility of black voters. *See Hunter* v. *Underwood,* 471 U.S. 222 (1985). Fact and opinion witnesses no doubt would clash in their predictions of whether such a change would diminish voter participation by race. Whether or not it is possible to prove that such a device actually would diminish the practical ability of black citizens to elect candidates of their choice, such a rule should be denied preclearance if it is intended to disqualify black voters.

If a covered jurisdiction relocated polling places from centers that are familiar and readily accessible to black voters to areas inconvenient and perceived as hostile to the black community, that voting change is subject to the preclearance requirement of § 5. *See Perkins* v. *Matthews,* 400 U.S. 379, 387-88 (1971). If the jurisdiction brought the change in polling places to the D.C. District Court for preclearance, it should be denied regardless of factual conflicts about whether black voters would actually be deterred. If white leaders testified that they changed the polling places just out of hatred, to force black voters to come to them in order to participate, it should matter not at all whether a single black voter would refrain from voting at the new polling place. Such discrimination should not be dignified with preclearance since it is unsupported by any rational, nondiscriminatory basis.

Denial of preclearance to a redistricting plan infected with a discriminatory purpose that is not retrogressive is important in jurisdictions like Bossier Parish, in which the existing plan against which retrogression is measured has no majority black election districts and only white candidates had ever been elected to the School Board at the time of the adoption of the proposed plan. In such jurisdictions, voting changes imposing any conceivable means of limiting black voter participation could pass muster under the "effect" prong of § 5, as long as they merely hold even the white dominance of the electoral system. If the "purpose" analysis also is limited to "intent to retrogress," the D.C. District Court would have

to preclear even the most flagrantly racist efforts to hold down a low baseline of meaningful black voter participation.

In short, a covered jurisdiction's "extraordinary success in resisting integration" should not become a "shield for further resistance," *City of Pleasant Grove,* 479 U.S. at 472, that requires preclearance of voting changes that seek only to maintain the status quo for the racially invidious reason that the status quo is very favorable to white voters. In redistricting cases, such a jurisdiction could pass a plan designed to maintain the status quo, accompanied even with the most overt and outlandishly racist statements, and still gain preclearance of its plan.

Congress sought in the Voting Rights Act to break the status quo, which was characterized by discrimination that kept meaningful black voting participation at very low levels. Racially motivated efforts to maintain that status quo are as invidious and violative of the Constitution as are efforts to retrogress.

II. APPLYING THE *ARLINGTON HEIGHTS* STANDARD TO THE UNCONTESTED FACTS BELOW, THIS COURT SHOULD REVERSE BECAUSE THE BOARD'S PROPOSED DISTRICTING PLAN WAS MOTIVATED BY A PURPOSE TO DISCRIMINATE ON THE BASIS OF RACE.

The facts in this case, to a remarkable degree, have been stipulated by the parties. App. 145a-232a. The summary of the facts herein relies principally on the stipulations and on the findings of the majority below, and applies the *Arlington Heights* factors, as the D.C. District Court was directed to do on remand. *Id.* at 49a.

Because the Board was starting from a baseline of no majority black election districts, retrogression is not the salient factor in the inquiry. The Board's adoption of the Jury plan was surrounded with racial tension, marked by irregular procedures and deviations from traditional districting principles, and what the D.C. District Court found to be a "tenacious determination to maintain the status quo."

Id. at 7a. The evidence establishes that preclearance of the plan should be denied because the Board has not carried its burden of demonstrating the absence of a purpose to deny or abridge the right to vote on account of race or color.

A. Effect of the Plan.

In 1992, in response to the need to redistrict for one-person-one-vote purposes following the 1990 census, the Board adopted a 12 single-member-district reapportionment plan with 12 majority-white districts. The Board's plan during the 1980s also had no majority black districts. By 1990, however, Bossier Parish, Louisiana had a population that was 20.1% black, *id.* at 145a-146a (¶ 5), and a voting age population that was 17.6% black. *Id.* at 146a (¶ 6). Black students also comprise 29% of the enrollment in the Parish's public schools. *Id.* at 81a n.2; *id.* at 191a (¶ 142). No black candidate, however, had ever been elected to the 12-member School Board when the plan was adopted in 1992. *Id.* at 145a (¶ 4).

As the parties stipulated below, voting patterns in Bossier Parish are affected by racial preferences. *Id.* at 201a-207a (¶¶ 181-196). The foreseeable impact of the Board's adoption of a redistricting plan with all majority-white districts, therefore, was to ensure that when black voters and white voters prefer different candidates, white voters' preferences will prevail, *see id.* at 118a-120a, perpetuating the status quo.

The record furthermore showed that the creation of 12 majority-white election districts was not dictated by adherence to traditional redistricting principles. The parties stipulated and the court below found that the black population of the Parish is concentrated in two areas. More than 50% of the black residents live in Bossier City, App. 79a; *id.* at 146a-147a (¶ 10); another significant percentage of black residents is concentrated in communities in the northern rural portion of the Parish. *Id.* The School Board stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," *id.* at 154a-155a (¶ 36), and that the outlines of a second such

district in the northern part of the parish were "readily discernible." *Id.* at 194a (¶ 148). By fragmenting or "fracturing" predominantly black residential areas, however, the Board avoided drawing any majority-black districts. *See id.* at 190a-192a (¶¶ 137-138, 142). On remand, Bossier conceded that "[t]he impact of [its] plan does fall more heavily on blacks than on whites," and, more specifically, that its election plan "did dilute black voting strength." Brief In Behalf of Plaintiff on Remand at 12, 21.

The Board's plan not only has a harsh impact on black voters; it departs substantively from its earlier districting plans and ignores factors that it had previously considered paramount. App. 128a-129a. For example, the Police Jury plan pitted School Board incumbents against one another in two districts. *Id.* at 85a. Likewise, as the court below recognized, the Police Jury plan distributed schools unevenly, with some election districts containing no schools and other districts containing several. *Id.* at 85a; *see also id.* at 151a, 191a (¶¶ 24, 141).

The plan also contained one district that included "almost half of the geographic area in the Parish," *id.* at 129a, several others that were not compact according to the Board's own cartographer, *id.* at 191a (¶ 139), and one district that was not contiguous. *Id.* at 6a; J.A. 221-238 (Cooper). The plan also violated a state law requirement that no election district deviate from the one-person, one-vote ideal by more than 5%. *Id.* ¶ 31; La. R.S. 17:71.3 E(2)(a) and E(3)(a) (J.A. 374-379).

The Board stipulated to facts showing that its plan does "not respect communities of interest in Bossier Parish." App. 129a (citing Stipulations ¶¶ 135-37). What the plan did accomplish was splitting black communities and retaining all white-majority election districts. The panel majority below found that those departures from the Board's traditional districting criteria "establish[ ] rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 7a.

B. Historical Background of the Adoption of the Plan.

The adverse effects of racially polarized voting on the ability of black voters to elect candidates of their choice are exacerbated in Bossier Parish by the effects of past discrimination. App. 210a-218a (¶¶ 213-243). It was undisputed below that the depressed socioeconomic and educational levels of black citizens of Bossier Parish make it hard for them "to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote; [these factors] in turn cause a depressed level of political participation." *Id.* at 207a-210a (¶¶ 197-202, 206-213).

The dark history of voting discrimination in Bossier Parish was undisputed below. *Id.* at 210a-216a (¶¶ 214-232). The parties stipulated that "vestiges of discrimination persist which affect the rights of black persons to register, to vote or otherwise participate in the democrative process." *Id.* at 210a (¶ 214). After the passage of the Thirteenth Amendment, significant numbers of black Louisianans registered to vote. *Id.* at 210 (¶ 215). Beginning in 1896, however, Louisiana enacted laws intended to reduce black voting; black registration decreased by 90% within a few years. App. 121a; *id.* at 210a-211a (¶ 215-219). In 1921, an amendment to the State Constitution required persons seeking to register to vote to "'give a reasonable interpretation'" of a constitutional provision. *Id.* at 122a, 211a-212a (¶ 221). That amendment, which disenfranchised most black citizens, was not invalidated until 1965. *Louisiana* v. *United States*, 380 U.S. 145 (1965). After an all-white Louisiana Democratic primary was invalidated, the party then adopted an anti-single-shot rule and a majority-rule requirement for party office. App. 122a; *id.* at 212a (¶ 222); *Major* v. *Treen*, 574 F. Supp. 325, 340-41 (E.D. La. 1983).

The School Board's history of discrimination in education against black citizens demonstrates its motive for wanting to continue 12 majority-white districts. The schools in Bossier Parish are segregated by race. App. 123a-124a (four elementary schools have predominantly black enrollments);

id. at 217a-218a (¶¶ 240-242). While the District's total school enrollment is only 29% black, Bossier and Butler Elementary Schools, whose attendance areas are adjacent to one another in Bossier City, were 77% and 74% black in 1994. U.S. Exh. 84YY; U.S. Exh. 84KK. Likewise, both schools in Board Member Thomas Myrick's district in the northern portion of the Parish have become more than 75% black, J.A. 247-248, a telling contrast to the Board's claim periodically in this litigation that black residential population is not sufficiently concentrated to permit it to draw majority-black voting districts. So long as black voters had no voice, and their children are largely isolated in predominantly black schools, the Board could safely ignore their concerns. For decades this has been the case.

The Board maintained *de jure* segregation in its schools long after *Brown* v. *Board of Education*, 347 U.S. 483 (1954). App. 122a; *id.* at 216a (¶ 235). While the Board has been a defendant for more than 30 years in the school desegregation case of *Lemon* v. *Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.), it still has not fulfilled its constitutional obligations to remedy segregation and establish a unitary school district. App. 122a-124a. *See Lemon* v. *Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd*, 370 F.2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911 (1967).

The parties stipulated that the "Board for years sought to limit or evade its desegregation obligations." App. 216a (¶ 237). The Board used techniques such as assigning "black children of Barksdale Air Force Base personnel to black schools without a right, to transfer to white schools [on grounds] that they were 'federal children' and not within the 'jurisdiction' of the school district." *Id.* at 216a-217a (¶ 237). Judge Wisdom rejected the Board's "new and bizarre excuse for rationalizing [its] denial of the constitutional right of Negro school children to equal educational opportunities as white children." App. 217a (¶ 237) quoting *Bossier Parish School Bd.* v. *Lemon*, 370 F.2d 847, 849 (5th Cir. 1967). The federal courts rejected the Board's "freedom of choice" and

other student assignment plans, including one that proposed to assign students to schools in Plain Dealing on the basis of their scores on the California Achievement Test. App. 217a (¶ 238). *See Hall* v. *St. Helena Parish Sch. Bd.*, 417 F.2d 801 (5th Cir. 1969); *Lemon* v. *Bossier Parish Sch. Bd.*, 421 F.2d 121 (5th Cir. 1970); *Lemon* v. *Bossier Parish Sch. Bd.*, 444 F.2d 1400 (5th Cir. 1971).

While the school desegregation consent decree requires the Board to follow *Singleton* standards and assign teachers to schools by race in approximately their proportion in the District as a whole, the Board has assigned black teachers disproportionately to predominantly black schools, such as Bossier and Butler Elementary Schools, contributing to their increasing racial identifiability. *See Singleton* v. *Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969), *cert. denied sub nom. West Feliciana Parish Sch. Bd.* v. *Carter*, 396 U.S. 1032 (1970); App. 217a-218a (¶¶ 239-240); J.A. 281-287 (Lewis) (admitting *deliberate* assignment of more than 70% black faculty to predominantly-black Butler Elementary School, despite the fact that district-wide black faculty had declined to less than 10%).

As the court below recognized when it examined this evidence on remand, "the intent [this history] proves . . . is a tenacious determination to maintain the status quo." App. 7a. Black citizens have tried without success to alter these policies and practices. Bossier is required by federal court order to maintain a biracial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." *Id.* at 182a (¶ 111). The Board admitted that, for decades, it simply ignored this requirement altogether. *Id.* at 182a-183a (¶ 112). In 1993, the Board established a committee; but when black members made policy suggestions, the Board unilaterally disbanded the committee. App. 184a (¶ 116); *id.* at 124a. As Board members admitted, they did not want this committee getting into "policy" questions. *Id.* Even in the face of a federal court mandate to listen to the concerns of the black community, Bossier refused to do so. As a result, the black

citizens of Bossier Parish are effectively cut off from any opportunity to have a voice in the operation of their public schools. Adopting a redistricting plan with 12 majority-white districts continued this pattern of exclusion. This history, as the majority found on remand, "provides powerful support for the proposition that . . . Bossier . . . resisted adopting a redistricting plan that would have created majority black districts." *Id.* at 7a.

C. Specific Sequence of Events Leading to the Decision to Adopt the Jury Plan.

The redistricting process began in May 1991, when the Board decided to develop its own plan rather than adopt the one previously accepted by the Police Jury in response to its own need to redistrict following the 1990 census. Throughout the 1980s the Jury and the Board had different election districts, but both had 12 single-member districts that were majority white. *Id.* at 79a-81a; 151a, 171a (¶¶ 22, 80-81).

Given the fact that the next School Board election was not scheduled until November 1994, there was no need for hasty Board action. *Id.* at 81a-82a. The Board hired Gary Joiner, the cartographer who had drawn the Jury plan. *Id.* He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Jury plan. *Id.* at 173a (¶¶ 86-87).

On July 29, 1991, the Police Jury plan was precleared by the Justice Department. *Id.* at 80a. The parties stipulated, however, that members of the Police Jury were "specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City." *Id.* at 154a, 160a-161a, 162a (¶¶ 36, 52-53, 57); the parties stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City." *Id.* at 154a-155a (¶ 36). Alternate configurations for a contiguous majority-black district in the northern part of the Parish also could be created. *Id.* at 194a (¶ 148). However, the Police Jury deliberately misled the public, *id.* at 161a-162a (¶ 54), the only black police juror, *id.* at 159a (¶ 47),

and the Attorney General, *id.* at 165a-166a (¶¶ 65-66), by claiming that drawing any majority-black district was impossible. Despite these misrepresentations, some black community groups opposed the plan and specifically asked that their letter expressing concerns about it be included in the Police Jury's § 5 submission. *Id.* at 147a, 165a-166a (¶¶ 11, 65-66). The letter was not submitted.

School Board member Thomas Myrick participated in private meetings with Mr. Joiner and white police jurors during this time. App. 82a; *id.* at 159a-160a, 172a-173a (¶¶ 48, 85).[9] After these meetings, Mr. Myrick, who lives in an area that the parties stipulated "would likely be included in any majority-black district to be drawn in the northern part of Bossier Parish," *id.* at 160a (¶ 48), recommended that the Board adopt the Police Jury plan. *Id.* at 174a (¶ 90). "On September 5, 1991, however, the Board decided *not* to adopt the Jury plan, largely because it would pit incumbents against each other." *Id.* at 125a (emphasis added). "Over the course of the next year, Board members considered a number of redistricting options." *Id.* "Mr. Joiner met privately with Board members and demonstrated different possibilities to them on his computer." *Id.* at 125a; 176a (¶ 96). These meetings were not open to the public, nor were there any recorded minutes or published notices of the meetings. *Id.* at 126a; 176a (¶ 96).

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. *Id.* at 126a. In March of 1992, George Price, on behalf of a coalition of black community groups, wrote to the Board asking to participate in its redistricting process. App. 82a; *id.* at 175a (¶ 93). Neither the Board nor the Superintendent responded to this request. *Id.* In August

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9 Despite the Board's stipulations about Mr. Myrick's meetings with Mr. Joiner and the Police Jurors, App. 159a-160a, 172a-173a (¶¶ 48, 85), and Mr. Joiner's live testimony about such meetings, J.A. 260-266 (Joiner), Mr. Myrick denied on the witness stand that any of them took place. J.A. 247-258 (Myrick). The D.C. District Court rejected Mr. Myrick's testimony. App. 82a.

of 1992, Mr. Price sent another letter asking specifically to be involved in every aspect of the redistricting process. *Id.* (¶ 94).

Frustrated by the Board's unresponsiveness, Mr. Price contacted the NAACP Redistricting Project in Baltimore, Maryland. *Id.* at 177a (¶ 98). The Project was able to develop a partial plan for Mr. Price to discuss with the School Board. That illustrative plan consisted of two majority-black districts. *Id.* The plan did not show the other 10 districts that would make up the Parish. *Id.* When Mr. Price gave this information to a school district official, he was told that it would not even be considered because it only showed two districts. *Id.* (¶ 99). Mr. Price went back to the NAACP, and a complete 12-district illustrative plan was drawn up. *Id.* The parties stipulated that this plan demonstrated that "two contiguous districts with a black voting age population majority can be drawn within Bossier Parish for the Bossier Parish School Board." *Id.* at 192a (¶ 143).

On September 3, 1992, when Mr. Price appeared on behalf of the black community at a Board meeting and presented a new plan showing all 12 districts, including 10 majority-white and two majority-black districts, the Board dismissed it summarily, claiming incorrectly that it could not even consider any plan that split precinct lines. *Id.* at 177a-179a (¶¶ 100-102). Until that time, however, the School Board had been actively considering alternatives to the Police Jury plan, almost all of which would have split precincts. *See* App. 107a; *id.* at 151a, 174a (¶¶ 23, 89).

At the Board's next meeting, on September 17, 1992, Mr. Price again presented the NAACP's illustrative plan. *Id.* at 179a-180a (¶ 106). Instead of discussing the plan with Mr. Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the Board's purported reason for rejecting the plan, *but see id.* at 151a (¶ 23)), the Board responded by immediately passing a motion of intent to adopt the Jury plan. *Id.* at 127a.

Around this time, a narrow majority of the Board appointed Jerome Blunt as the first black person ever to serve on the Board. *Id.* at. 84a. Mr. Blunt was appointed to a six-month term representing an 11% black district. *Id.* at 84a-85a. He was sworn in at the September 17, 1992, meeting but was defeated by a white candidate in the special election six months later. *Id.* at 85a. As Judge Kessler observed:

> Certainly, Board members knew that adopting the Police Jury plan would ignite controversy in the black community. And on the very night of that decision, the School Board appointed a black to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan. [*Id.* at 133a-134a n.9.]

On September 24, 1992, an overflow crowd attended the state-mandated public hearing on the redistricting plan. *Id.* at 85a. Fifteen people spoke against the Board's proposed plan, most of whom objected because it would dilute minority voting strength. App. 85a; *id.* at 180a-181a (¶ 108). Not a single person spoke in favor of the plan. *Id.* At this hearing, Mr. Price also presented the Board with a petition signed by more than 500 Bossier Parish residents, asking the Board to consider an alternative redistricting plan. *Id.* at 85a. This was the largest petition presented to the Board on any subject in years. *Id.* at 180a (¶ 108).

Despite the one-sided input from Bossier citizens, and despite the fact that elections still were more than two years away, the Board voted, at its very next meeting on October 1, 1992, to adopt the Jury plan. While Jerome Blunt encouraged the other Board members to explore the issues being raised by the black community, the Board refused. J.A. 125-130 (Blunt); *id.* at 80-83 (U.S. Exh. 36). Mr. Blunt abstained from the vote in protest, *id*; but the white majority present voted unanimously for the Jury plan. App. 85a. Neither at this hearing nor at its other meetings did the Board members explain on the record their reasons for their support of the Police Jury plan. *See* J.A. 60-69, 72-83 (U.S. Exhs. 23-36). Thomas Myrick, in the one verbatim statement concerning

redistricting recorded in two years of Board minutes, told Mr. Blunt that this was not a question of "black and white" but of "majority rule." J.A. 80-83 (U.S. Exh. 36 at 67). The Board's minutes reflect an unexplained retreat to the Police Jury plan that it had rejected a year earlier. J.A. 72-77, 80-83 (U.S. Exhs. 32, 34, 36). Thus, no perceived strengths of the Police Jury plan are discussed or documented anywhere on the public record of the Board's action. As with the meetings of September 3 and September 17, 1992, the minutes of this meeting reflect virtually no substantive consideration of the Police Jury plan.

The D.C. District Court concluded that "[w]hen . . . the redistricting process began to cause agitation within the black community, . . . the Police Jury plan became, as Board member Myrick described it, 'expedient.'" App. 106a. The Jury plan only became "expedient" when the Board was publicly confronted with an illustration that alternatives to 12 white-majority districts were possible. Faced with the growing frustration of the black community at being excluded from educational policy decisions and from the electoral process, the only way for the Board to ensure a plan with all majority-white districts was to adopt the Jury plan quickly, despite its other drawbacks. App. 128a; *id.* at 85a, 106a.

D. Board Departures from Normal Practice.

The sequence of events described in section C. above illustrates numerous departures from normal practice in the Board's consideration and adoption of the Jury plan. Procedurally, the Board rushed to a decision, with no upcoming election, upon being confronted with a demonstration that majority black election districts could be drawn. The Board departed from the conduct expected of elected officials when it adopted the Jury plan in defiance of the contrary views of every speaker at the public hearing and in the face of the largest petition it had received in recent years on any issue. The Board hid its real deliberations from the public, made no official record of its reasoning, and

ignored the efforts of leaders in the black community to be included.

On the substance of the plan as well, the Board reached a result contrary to its own districting goals and traditional principles that would be expected to govern the development of an election plan for a school board. *See* page 29, *supra*. The D.C. District Court majority below evaluated these departures from traditional districting practice as part of its analysis of the "effect" of the plan. App. 6a. The D.C. District Court summarized its earlier findings as "tending to establish that the board departed from its normal practices," and found that this "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at. 7a.

E. Contemporary Statements of Participants.

The motivation that School Board member Thomas Myrick described on the stand as "expediency," he and other Board members spoke about more candidly in private. Mr. Myrick, who lives in one of the areas that could accommodate a black-majority district and that contains two schools -- both of which have student enrollments that are more than 75% black -- told black leaders that he would not "let [them] take his seat away from him." *Id.* at 83a n.4. School Board member Henry Burns told a black acquaintance that "while he personally favors having black representation on the board, other school board members oppose the idea." *Id.* at 83a n.4. The School Board offered no evidence denying or explaining this statement. School Board member Barry Musgrove told a prominent black leader that "while he sympathized with the concerns of the black community, there was nothing more he could do . . . on this issue because the Board was 'hostile' toward the idea of a black-majority district." *Id.*

In subsequent efforts to justify the unexplained reversal of its initial decision and its refusal to consider alternatives from the black community, the Board later offered the Attorney

General and the District Court a series of pretextual explanations, including several which the majority itself found "clearly were not real reasons." *Id.* at 106a n.15. For example, the Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw* v. *Reno*, 509 U.S. 630 (1993) (decided June 28, 1993) even though *Shaw* was decided nine months after the Board adopted its plan. *Id.*

The Board also reiterated its claim that it could not adopt a plan with fewer than 12 majority-white districts because any such plan would require precinct-splitting, which it erroneously claimed violates state law. App. 135a. The majority found, however, that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." *Id.* at 108a. Indeed, the majority found and the parties stipulated that the Board was aware when it entered the redistricting process that if it did not adopt the same plan as the Police Jury, it would need to have new precincts established. App. 108a, *id.* at 174a (¶ 89). Yet the Board hired Gary Joiner to perform 200 to 250 hours of work, far more than would be necessary simply to recreate the Jury Plan. *Id.* at 173a (¶¶ 86-87).

But it was only *after* the black community presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale. Furthermore, while the Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, and many do so when requested by a school board. *Id.* at 148-152a, 164a (¶¶ 13-25, 60-61). Here, as the majority found, the Board never made such a request. *Id.* at 84a.

Bossier's final later-proffered justification for adopting the Police Jury plan was that it guaranteed preclearance; that is, the Attorney General would approve the Board's plan because it was identical to the Jury plan which already had been precleared. *Id.* at 137a. However, "guaranteed preclearance" was not the Board's objective; if it had been, the Board would not have waited until October 1, 1992 -- almost 14 months after the Jury plan was precleared -- to adopt it. *Id.* Moreover, adopting a plan with one or more majority-

black districts certainly would not have made preclearance *less* likely. To the contrary, given the Board's history and the Attorney General's position, the Board could not reasonably have believed that a plan that would both honor traditional districting principles and improve the opportunity of black citizens to participate in the political process would have had *less* chance of preclearance than the Police Jury plan.

CONCLUSION

For all of these reasons, this Court should reverse the judgment below.

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Nos. 98-405 and 98-406

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL APPELLANT

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QUESTION PRESENTED

Whether the district court erred in concluding that, because Bossier Parish School Board's 1992 redistricting plan was not enacted with a retrogressive purpose, it was not enacted with "the purpose * * * of denying or abridging the right to vote on account of race," within the meaning of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

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In the Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

No. 98-406

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL APPELLANT

OPINIONS BELOW

The opinion of the district court (J.S. App. 1a-28a)[1] is reported at 7 F. Supp. 2d 29. An earlier opinion of the district court (J.S. App. 78a-144a) is reported at 907 F. Supp. 434. This Court's opinion on appeal from the district court's initial decision (J.S. App. 29a-77a) is reported at 520 U.S. 471.

JURISDICTION

The judgment of the three-judge district court was entered on May 4, 1998. J.A. 33. Notices of appeal

[1] "J.S. App." refers to the appendix to the jurisdictional statement in No. 98-405.

were filed on July 6, 1998 (the Monday following Friday, July 3, a federal holiday). J.A. 33-34. This Court noted probable jurisdiction on January 22, 1999. J.A. 408. This Court's jurisdiction rests on 42 U.S.C. 1973c.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Reproduced in an appendix to this brief (App., *infra*, 1a-2a) are pertinent provisions of the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

STATEMENT

1. The State of Louisiana and all of its political subdivisions are jurisdictions covered by the "preclearance" requirement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. See 28 C.F.R. Pt. 51 App. Section 5's preclearance requirement provides that a covered jurisdiction may not implement any change in its election practices unless either (1) it has first submitted the proposed change to the Attorney General and the Attorney General has not interposed an objection to the change within 60 days, or (2) it has obtained a declaratory judgment from the United States District Court for the District of Columbia that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. This case involves the effort by the School Board of Bossier Parish, Louisiana (appellee or Board) to gain preclearance for a redistricting plan that it adopted in 1992.

Bossier Parish is located in northwestern Louisiana. The Parish's primary governing body, the Police Jury, and the Parish's separate School Board each consist of 12 members elected from single-member districts by

majority vote to four-year concurrent terms. J.S. App. 145a. There is no legal requirement that the 12 Police Jury districts and the 12 School Board districts be the same, and the districts for the two bodies were different throughout the 1980s. *Id.* at 150a-151a.

The School Board and the Parish both have a history of racial discrimination beginning before the Civil War and continuing to the present. J.S. App. 210a-220a. That discrimination has affected both the administration of the school system by the Board and the drawing of voting districts for elections to both the Board and the Police Jury.

As for the administration of the school system, *de jure* segregation prevailed in Louisiana's schools long after this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). J.S. App. 216a. In 1965, the Board was placed under a court order to eliminate the vestiges of racial discrimination in its school system. *Lemon* v. *Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). The Board repeatedly sought to evade its desegregation obligations through a variety of devices, and it remains subject to that court order, its 1979 request for termination having been denied. J.S. App. 216a-217a. The Board has continued to violate the *Lemon* court's order to maintain a biracial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." *Id.* at 182a-183a. The Board also has continued to assign disproportionate numbers of black faculty to schools with predominantly black enrollment. The schools in Bossier Parish have, in fact, become increasingly segregated by race since the 1980s. *Id.* at 217a-218a.

As for the Parish's electoral systems, in 1990, black persons comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. J.S. App. 145a-146a. The black population of the Parish is heavily concentrated in two areas. More than 50% of the black residents live in Bossier City, and the remaining black population is concentrated in four populated areas in the northern rural part of the Parish. *Id.* at 146a-147a. Voting patterns in the Parish are polarized along racial lines, see *id.* at 201a-206a; see also J.A. 163-174 (analysis by government's expert); one Police Juror estimated that at least 80% of white and black voters choose candidates of their own race, J.S. App. 201a. The parties have also stipulated that it is feasible to draw two reasonably compact majority-black districts in the Parish using traditional districting features such as roads, streams, and railroads. *Id.* at 154a-155a, 192a-194a. Nevertheless, the Police Jury has never enacted a districting plan with any majority-black districts, *id.* at 79a, and black voters have historically been unable to elect candidates of their choice to political positions in the Parish, *id.* at 195a-206a; see J.A. 174 (government's expert concluding that, because of racially polarized voting patterns and bloc voting, "African American voters are likely to have a realistic opportunity to elect candidates of their choice * * * only in districts in which they constitute a majority of the voting age population").[2]

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[2] When the largely stipulated record was compiled in this case, no black person had ever been elected to the School Board. J.S. App. 195a. In the 16 elections in the Parish held from 1981 through 1993 in which a black candidate ran against a white candidate in a single-member district or for mayor, only two black candidates (one for Police Jury, one for Bossier City Council) won. Both of those candidates ran in districts that contained a United States Air Force base that increased the ability of black voters to elect representatives of their choice, in a manner peculiar to those districts. *Id.* at 196a-198a, 199a-200a, 206a; J.A. 168-170, 515-521. When the plans were reconfigured after the 1990 census in a way that reduced the effect of the Air Force Base area, the black incumbent Police Juror was reelected unopposed in 1991 (J.S. App. 198a), and the incumbent black Bossier City Councilmember faced a white challenger in 1993 and lost (*id.* at 200a).

Before its earlier decision in this case, this Court denied the Board's motion to supplement the record with the results of an election that occurred after the district court's 1995 decision. *Reno* v. *Bossier Parish Sch. Bd.*, 517 U.S. 1154 (1996). On remand, the parties agreed to rest on the record that had previously been compiled. J.S. App. 1a. The district court offered the Board two opportunities to reopen the record, which the Board declined. Thus, the district court decided this case on the basis of stipulated facts showing that voting is racially polarized in the Parish, and that no black person had ever been elected to the Board. The Board later asked the district court to take judicial notice of election results after the court's November 1995 judgment, in which blacks were elected to the Board. The district court denied the motion, and explained that, were it "to consider the election results at all, [it] would need more information about them." *Id.* at 1a-2a n.1; see also 98-405 Gov't Opp. to Mot. to Aff. 3-4 n.2.

2. After the 1990 census revealed that its districts were malapportioned, the Police Jury began the process of redistricting. "At the time of the 1990-1991 redistricting process, some Police Jurors were specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City," and "it was obvious that a reasonably compact black-majority district could be drawn within Bossier City." J.S. App. 154a-155a. Nonetheless, during public meetings in April 1991, white Police Jurors and the Police Jury's cartographer, Gary Joiner, told citizens that it was impossible to create such districts because the black population was too dispersed. *Id.* at 160a-162a.

On April 30, 1991, the Police Jury adopted a redistricting plan that, like all of its predecessors, contained no majority-black districts. *Id.* at 163a-164a. The plan required the creation of 20 new precincts and was not the alternative with the fewest precinct splits. *Id.* at 167a-168a.

On May 28, 1991, the Police Jury submitted its redistricting plan to the Department of Justice for preclearance under Section 5. The Police Jury did not provide the Department with information then available to it showing that reasonably compact majority-black districts could be created. Nor did it provide a copy of a letter from the Concerned Citizens of Bossier Parish, a local organization, protesting the Police Jury's exclusion of black citizens from the redistricting process, despite the organization's express request that the letter be included in the Police Jury's Section 5 submission. On July 29, 1991, based on the information submitted to it, the Department of Justice precleared the plan for Police Jury elections. J.S. App. 165a-167a.

3. The School Board initially proceeded without urgency on its own redistricting process, as its next elections were not scheduled to occur until October 1994. J.S. App. 172a. On May 2, 1991 (after the Police Jury had adopted its plan), the Board held a meeting to which the Police Jury's cartographer, Joiner, was invited. Joiner reminded the Board that, because no election was scheduled until 1994, it had "more than adequate time" in which to develop a plan. *Id.* at 173a. The Board engaged Joiner to draft a redistricting plan, which he estimated would take 200 to 250 hours, far longer than would be needed simply to duplicate the Police Jury plan. *Id.* at 125a, 173a. On September 5, 1991, Joiner presented the already-precleared Police Jury plan to the Board, along with precinct maps (because, Joiner explained, the Board would have to work with the Police Jury to alter precinct lines for its own plan). *Id.* at 174a. But despite a proposal by Board Member Tom Myrick (who would have benefitted from the Police Jury Plan because it preserved his district, which was majority-white but contained the largest concentration of black voters under the preexisting plan), the Board did not at that time adopt the Police Jury plan. *Ibid.*

The Board's decision not to adopt the Police Jury plan reflected the fact that the two bodies have different functions and priorities. Police Juries "are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. School board members, by contrast, are typically concerned with having a public school or schools in each district." J.S. App. 151a. The district lines in the Police Jury plan, however, were not drawn with school locations in mind. *Id.* at 191a. Also, the Police Jury plan did not correspond to the distribution of Board incumbents; if adopted by the Board, the Police Jury plan would have paired Board incumbents against each other in two districts and would have created two other districts with no incumbent. *Id.* at 181a.

Beginning in March 1992, appellant-intervenor George Price, president of the local chapter of the NAACP, wrote to the Board to point out that there was no minority representation on the Board, and requested that he be included in the Board's redistricting process. The Board did not respond to those requests. J.S. App. 175a-176a. In August 1992, Joiner met privately with Board members and showed them various computer-generated alternative scenarios, none of which contained a majority-black district. *Id.* at 176a. Also in

August 1992, at a time when no other plan had been publicly released, Price presented Joiner with a partial plan, containing two majority-black districts, that had been developed by the NAACP. Joiner told Price the Board would not consider a plan that did not include the other ten districts. J.A. 175-176; J.S. App. 177a-178a.

At a Board meeting held on September 3, 1992, Price presented a new NAACP plan that depicted all 12 districts and included two majority-black districts. J.S. App. 177a-178a. The Board refused to consider Price's new plan, ostensibly because "the [NAACP] plan's district lines crossed existing precinct lines, and therefore violated state law." *Id.* at 178a-179a. The Board, its cartographer, and its attorney knew at the time, however, that the Board was not legally precluded from considering a plan that would cross existing precinct lines. *Id.* at 179a. Although state law prohibits school boards themselves from splitting precincts, *id.* at 149a, school boards may and do "request precinct changes from the Police Jury necessary to accomplish their redistricting goals," *id.* at 151a. The Board had long been aware of a possible need to split precincts in fashioning its redistricting plan, for Joiner had explained at the start of the redistricting process that it would have to work with the Police Jury to do so, and had given the Board precinct maps. *Id.* at 174a.

At the next Board meeting on September 17, 1992, only two weeks after Price had presented the NAACP plan, the Board unanimously passed a motion of intent to adopt the Police Jury plan that it had initially found unsatisfactory. J.S. App. 180a. On September 18, 1992, Price and others sent a letter urging the Board to use the NAACP plan as a basis for drawing majority-black districts. J.A. 193-194. The Board's action to adopt the Police Jury plan precipitated overflow citizen attendance at a Board hearing on September 24, 1992, and many citizens, white and black, vocally opposed the plan. Price explained to the Board that, in light of the NAACP plan demonstrating the feasibility of drawing majority-black districts, the Department of Justice's preclearance of the Police Jury plan did not guarantee its preclearance for Board elections. The Board nevertheless adopted the Police Jury plan at its next meeting on October 1, 1992. J.S. App. 180a-181a.

The Board submitted the 1992 plan to the Attorney General for preclearance. On August 30, 1993, the Attorney General interposed an objection to the Board's plan, citing new information that had not been provided when the Police Jury submitted the same plan, such as the demonstrated feasibility of majority-black districts and the Board's refusal to engage in efforts to accommodate the concerns of the black community. J.S. App. 233a-237a.

4. On July 8, 1994, the Board filed a declaratory judgment action in the United States District Court for the District of Columbia, seeking preclearance of its 1992 election plan. The government opposed preclearance, arguing that the Board had not shown an absence of discriminatory purpose on its part, and also that the plan would "result[] in a denial or abridgment of the right * * * to vote on account of race or color," in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. The government did not argue, however, that the 1992 plan had either the purpose or effect of making the position of blacks *worse* than before it was enacted. See J.S. App. 88a, 221a.

On November 2, 1995, a divided three-judge district court granted preclearance. J.S. App. 78a-144a. The court first held that a redistricting plan may not be denied preclearance solely on the basis that the new plan

would violate Section 2. *Id.* at 89a-102a. The court also ruled that the Board, in adopting the Police Jury plan, did not have a racially discriminatory purpose that would bar preclearance. *Id.* at 102a-114a. In reaching that conclusion, the court acknowledged that the Board had "offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons." *Id.* at 106a n.15 (noting that Board had contended that the plan was designed to comply with *Shaw* v. *Reno*, 509 U.S. 630 (1993), which had not yet been decided when the 1992 plan was adopted). The court nonetheless found "legitimate, non-discriminatory motives" for the Board's decision: "The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing)." J.S. App. 106a.

Judge Kessler concurred in part and dissented in part, and would have denied preclearance. J.S. App. 115a-144a. Although she agreed with the majority that a Section 2 violation does not per se prevent Section 5 preclearance, she dissented from the majority's conclusion that the Board had satisfied its burden to show the absence of a discriminatory purpose in its adoption of the plan. *Id.* at 115a-116a. Taking into account evidence that, she maintained, was relevant to the intent analysis under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977), she found that "the evidence demonstrates conclusively that [the Board] acted with discriminatory purpose." J.S. App. 117a-118a.

5. The government appealed to this Court, and argued that a voting change may not be precleared under Section 5 if the change would violate Section 2, and that the district court erred in its purpose analysis. This Court disagreed with the government on the first point

and held, in agreement with the district court, that a voting change may not be denied preclearance under Section 5 solely because the change would "result" in a denial or abridgment of the right to vote, in violation of Section 2. J.S. App. 33a-45a. The Court explained that "a plan has an impermissible 'effect' under § 5 only if it 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'" *Id.* at 35a (quoting *Beer* v. *United States*, 425 U.S. 130, 141 (1976)).

The Court also held, however, that evidence that a voting change would dilute minority voting strength is relevant to whether that change has a discriminatory *purpose*, and therefore should be denied preclearance. J.S. App. 45a-51a. The Court stated that, even if the only discriminatory purpose that requires denial of preclearance under Section 5 is a retrogressive purpose, *i.e.*, an intent to make the position of minorities worse than before, evidence of vote dilution is relevant to that analysis. *Id.* at 47a. The Court remanded the case to the district court for further consideration as to whether the Board had a discriminatory purpose in adopting the 1992 plan. *Id.* at 50a-51a. In remanding the case, the Court "[left] open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent," and stated that the existence of a "non-retrogressive, but nevertheless discriminatory, purpose," and "its relevance to § 5, are issues to be decided on remand." *Id.* at 45a-46a.[3]

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[3] In separate opinions, Justice Breyer, joined by Justice Ginsburg, and Justice Stevens, joined by Justice Souter, concluded that the purpose inquiry under Section 5 extends beyond the search for retrogressive intent, and "includes the purpose of unconstitu-

6. On remand, the parties rested on the original record. J.S. App. 1a. The government argued that a voting change may not be precleared if it was enacted with a discriminatory (albeit not necessarily retrogressive) purpose, and that the evidence showed that the Board had adopted the 1992 plan with the discriminatory purpose of perpetuating the dilution of blacks' voting strength in Bossier Parish. The district court, again divided, again precleared the Board's plan. *Id.* at 1a-28a.

As to whether Section 5 requires denial of preclearance of a plan enacted with a discriminatory but non-retrogressive purpose, the majority stated, "We are not certain whether or not we have been invited to answer the question the Court left for another day, but we decline to do so in this case." J.S. App. 3a. The majority also remarked that the record in this case "will not support a conclusion that extends beyond the presence or absence of retrogressive intent." *Ibid.* Although the majority remarked that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose,'" it stated that "those imagined facts are not present here." *Id.* at 3a-4a. Thus, the majority proceeded to analyze only whether the Board had enacted the plan with an intent to retrogress. It did not examine whether the evidence demonstrated that the Board had enacted the plan with the unconstitutional purpose of maintaining an electoral system that dilutes the votes of blacks in the Parish, nor did it apply the *Arlington Heights* framework to

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tionally diluting minority voting strength." J.S. App. 56a (Breyer, J., concurring in part and concurring in the judgment); *id.* at 76a (Stevens, J., dissenting in part and concurring in part) (agreeing with Justice Breyer on that point).

analyze evidence of such a purpose to dilute blacks' votes.

The district court adhered to its previous view that the Board's adoption of the Police Jury plan was supported by two "legitimate, non-discriminatory motives": the Board's belief that the plan would be easily precleared (because it had already been precleared by the Attorney General for use in Police Jury elections) and its "focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would." J.S. App. 5a. Those two motives, the court concluded, were sufficient to establish a "*prima facie* case for preclearance." *Ibid.*

The majority then considered, under the rubric of *Arlington Heights*, *supra*, factors that might be relevant to establish the Board's retrogressive intent. First, it considered whether there was evidence that the plan "bears more heavily on one race than another." J.S. App. 5a. It found that factor inconclusive, because, having limited its analysis to evidence of retrogressive intent, it could not find evidence that "the Jury plan bears more heavily on blacks *than the pre-existing plan*," *ibid.* (emphasis added); even if the 1992 plan was dilutive of black voting strength, it was no *more* dilutive than the previous plan, *id.* at 5a-6a. As for the historical background to the Board's adoption of the 1992 plan, the court acknowledged that there was "powerful support for the proposition that [the Board] in fact resisted adopting a redistricting plan that would have created majority black districts," including the Board's history of resistance to school desegregation (particularly its refusal to obey a district court order to maintain a biracial committee to study ways to attain a unitary school system). *Id.* at 6a-7a. But, the court stressed, all that history proved only "a tenacious de-

termination to maintain the status quo. It is not enough to rebut the School Board's *prima facie* showing that it did not intend retrogression." *Id.* at 7a. Similarly, the sequence of events leading up to the adoption of the plan "does tend to demonstrate the school board's resistance to the NAACP plan," and evidence of the Board's deviation from its normal practices "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise," but neither established retrogressive intent. *Ibid.*

Judge Kessler again dissented. J.S. App. 12a-27a. She again concluded that "the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose," *id.* at 12a, and that the Board's "proffered reasons for acceptance of the Police Jury plan are clearly pretextual," *id.* at 15a. She agreed with the government that the existence of a discriminatory, albeit nonretrogressive, purpose requires denial of preclearance under Section 5; otherwise, "we would commit ourselves to granting § 5 preclearance to a 'resistant' jurisdiction's nonretrogressive plan even if the record demonstrated an intent by that jurisdiction to perpetuate an historically discriminatory status quo by diluting minority voting strength." *Id.* at 17a. After reviewing evidence of vote dilution in Bossier Parish, Judge Kessler concluded, "[i]t would be impossible to ignore the weight and the relevance of this § 2 evidence to the School Board's intent to dilute the voting strength of blacks in Bossier Parish." *Id.* at 22a-23a. And she reiterated her previous conclusion, based on applying the *Arlington Heights* framework to the facts of this case, that "the only conclusion that can be drawn from the evidence is that [appellee] acted

with discriminatory purpose." *Id.* at 23a (brackets omitted).

SUMMARY OF ARGUMENT

A. Section 5 of the Voting Rights Act of 1965 prohibits a covered jurisdiction from implementing a new voting practice unless the jurisdiction establishes that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. The "purpose" prong of Section 5 requires the courts to decide whether a voting change has a discriminatory purpose, not merely whether it has a retrogressive purpose. The language of the statute refers simply to a purpose to deny or abridge the right to vote on account of race, and makes no reference to an intent to make the position of minorities worse. The background to Section 5 also makes clear that Congress enacted that provision to prevent covered jurisdictions from implementing voting changes denying and abridging minorities' voting rights in violation of the Constitution, whether or not they are retrogressive. Congress enacted Section 5 because its previous approach to unconstitutional racial discrimination in voting practices, requiring case-by-case litigation to enjoin particular practices, had proven inadequate; Congress found that offending jurisdictions simply replaced one voting practice declared by the courts to be discriminatory with another intended to accomplish the same result. If Section 5 were limited to voting changes with a retrogressive intent, then a jurisdiction could replace one unconstitutionally discriminatory voting practice with another having precisely the same purpose and effect. It is implausible that Congress intended to require either the Attorney General or this Court to give such

approval to unconstitutional, racially discriminatory voting practices.

This Court's previous decisions regarding Section 5 support a construction that precludes enforcement of all voting changes enacted with a racially discriminatory purpose. The Court has explained that, even when a voting change has an effect that does not preclude preclearance, the change should nonetheless be barred if it was enacted with a discriminatory purpose, because official actions taken with a racially discriminatory purpose have no legitimacy under the Constitution. Thus, if a change is enacted with the purpose to dilute the votes of minorities, it should be denied preclearance, even if it is not retrogressive. Although the Court has construed the "effect" prong of Section 5 to be limited to retrogression, that construction reflects concerns about the potential reach of a provision that opens official action to challenge because of discriminatory effects alone, and has little relevance to official action with a racially discriminatory motivation. This construction of Section 5's "purpose" prong is also supported by the Attorney General's longstanding and consistent practice in administering the statute, which is entitled to deference.

B. Appellee's 1992 redistricting plan should be denied preclearance because it had the unconstitutional purpose of diluting the voting strength of black voters in Bossier Parish. Properly analyzed in light of the factors set forth in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the evidence establishes appellee's discriminatory intent. There is both a long and a recent history of racial discrimination against blacks in Bossier Parish, including and especially discrimination by the School Board. The facts leading up to the adoption of the plan

persuasively show invidious intent. The Board originally had little interest in the Police Jury plan because that plan interfered with its traditional districting goals, and intended to adopt an entirely different plan; it turned to the Police Jury plan only after black voters in the Parish began to insist on a plan that would create a majority-black district. The record establishes that the Police Jury plan had the effect of perpetuating the dilution of blacks' voting strength in the Parish. Statements by School Board members also indicate the Board was hostile to black representation on the Board. The district court indeed acknowledged that the Board did not welcome improvement in the political position of blacks in the Parish, and that the Board was motivated to adopt the plan by a "tenacious determination" to maintain the status quo (J.S. App. 7a)—a status quo in which, appellee has conceded, blacks' votes are diluted.

In examining appellee's purpose, the district court erroneously confined its analysis of the evidence under the *Arlington Heights* framework to determining whether the plan had a *retrogressive* purpose. Thus, to the extent the district court may have addressed the plan's discriminatory (but not retrogressive) purpose, its analysis was legally insufficient, for it failed to apply *Arlington Heights* to determine whether the plan had a *discriminatory* purpose. Similarly, any conclusion by the district court that appellee adopted the plan for legitimate reasons could not be sustained on appeal because of the lower court's erroneous truncation of its analysis. The record shows in any event that appellee's justifications for its plan are pretextual. Moreover, because appellee must show the *absence* of a discriminatory purpose to its 1992 plan, preclearance should be denied because the evidence shows that the

plan did have a discriminatory purpose, even if there might also be legitimate justifications for the plan.

ARGUMENT

BECAUSE BOSSIER PARISH SCHOOL BOARD'S 1992 REDISTRICTING PLAN WAS ENACTED WITH AN UNCONSTITUTIONAL, RACIALLY DISCRIMINATORY PURPOSE, THE DISTRICT COURT ERRED IN PRECLEARING THAT PLAN

A. Section 5 Of The Voting Rights Act of 1965 Bars Preclearance Of A Voting Change Enacted With An Unconstitutional, Racially Discriminatory Purpose, Whether Or Not The Change Was Also Intended To Make The Position Of Minorities Worse Than Before The Change Was Enacted

1. Congress Intended Section 5 To Bar Implementation Of Unconstitutional Voting Changes Enacted By Covered Jurisdictions

Section 5 bars the implementation of a covered jurisdiction's voting change unless the jurisdiction establishes that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. A "purpose * * * of * * * abridging the right to vote on account of race" includes any purpose to limit the voting power of minorities, including the purpose to implement and perpetuate a regime because it dilutes the votes of racial minorities. See *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 569 (1969) (explaining that Section 5 requires preclearance review even when covered jurisdiction does not bar minorities from voting, because "[t]he right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot"); *Georgia* v. *United States*, 411 U.S. 526, 534 (1973) (Section 5 requires preclearance review of redistricting plans because of potential for dilution of minorities' votes); cf. *Rogers* v. *Lodge*, 458 U.S. 613, 617 (1982) (upholding Fourteenth Amendment intentional vote-dilution challenge to county's at-large election system).

This interpretation is not only consistent with the plain language of the statute, but also it is necessary to effectuate the unambiguous intent of Congress in enacting Section 5 of the statute, in two respects. First, Congress clearly intended in Section 5 to prohibit the implementation of any new practice that violated the Constitution's prohibitions against racial discrimination in voting. Second, Congress enacted Section 5 for the specific purpose of preventing jurisdictions from substituting for one prohibited voting practice another voting practice designed to restore—but not necessarily to magnify—the discriminatory features of the prohibited law. Neither congressional purpose would be served by the construction of Section 5 proposed by appellee (Mot. to Aff. 19), limiting its reach to voting changes enacted with "retrogressive intent"—*i.e.*, with the purpose of making the position of minorities worse than it was before the change.

Congress's overarching purpose in enacting and reenacting Section 5 was to enforce the Constitution's prohibitions against purposeful racial discrimination in voting. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 325-326 (1966); *City of Rome* v. *United States*, 446 U.S. 156, 173-178 (1980); S. Rep. No. 417, 97th Cong., 2d Sess. 9-10 (1982). Indeed, Section 5 tracks the language of the Fifteenth Amendment, which prohibits intentional racial discrimination in official voting practices. Cf. U.S. Const. Amend. XV, § 1 ("The right of citizens * * * to vote shall not be denied or abridged * * * on account of race [or] color[.]"); *Gomillion* v. *Lightfoot*,

364 U.S. 339 (1960). If Section 5's purpose prong were limited to voting changes enacted with a retrogressive intent, then the federal courts (including this Court) and the Attorney General would be required to give approval to changes specifically intended to impair minorities' voting rights in violation of the Constitution, so long as the voting changes were not intended to (and did not) make the position of minorities worse. The background to Section 5 shows that such a construction of Section 5 is implausible.

Congress enacted Section 5 for the specific purpose of stopping the practice of replacing one unconstitutional voting law with another. In the Civil Rights Act of 1957, Congress, to enforce the Fifteenth Amendment, had declared that all citizens otherwise qualified to vote should be entitled to vote "without distinction of race, color, or previous condition of servitude," 42 U.S.C. 1971(a) (1958), and had authorized the Attorney General to bring suit to prevent the deprivation of the right to vote on account of race, 42 U.S.C. 1971(c) (1958). The Justice Department's experience under the 1957 Act was that that statute's approach, requiring affirmative litigation by the federal government, accomplished little (and that only after great delay) because jurisdictions intent on impairing blacks' right to vote resisted voting rights litigation to the utmost. In particular, even after the federal government won final judgments enjoining jurisdictions from enforcing particular discriminatory tests, the jurisdictions simply switched to new devices in order to accomplish the same result. As Attorney General Katzenbach told a subcommittee of the House Judiciary Committee: "[T]he fact is that those who are determined to resist are able, even after apparent defeat in the courts, to devise whole new methods of discrimination. And often

that means beginning the whole weary process all over again."[4]

Congress therefore determined "to shift the advantage of time and inertia from the perpetrators of the

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[4] *Voting Rights: Hearings on H.R. 6400 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 89th Cong., 1st Sess. 5 (1965) (1965 House Hearing); see also *Voting Rights: Hearings on S. 1564 Before the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess. Pt. 1, at 11 (1965) (Attorney General Katzenbach, describing "second full-scale attempt to end discriminatory practices" in Selma); H.R. Rep. No. 439, 89th Cong., 1st Sess. 10 (1965) ("Indeed, even after apparent defeat resisters seek new ways and means of discriminating. Barring one contrivance too often has caused no change in result, only in methods."); S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 7-9 (1965) (joint views of 12 members of Senate Judiciary Committee, ascribing inadequacy of 1957 Act to "intransigence of local officials and dilatory tactics" used in voting rights litigation); H.R. Rep. No. 397, 91st Cong., 1st Sess. 2 (1969) (because of "State and local intransigence and delays in the judicial process," earlier legislation "yielded insignificant gains"); S. Rep. No. 417, *supra*, at 5 (before 1965, "case-by-case litigation proved wholly inadequate," for "[b]y the time a court enjoined one scheme, the election had often taken place, local officials had devised a new scheme, or both"); *South Carolina*, 383 U.S. at 309-315 (reviewing evidence before Congress about ineffectiveness of litigation under 1957 Act); *Perkins* v. *Matthews*, 400 U.S. 379, 396 & n.13 (1971) (similar); *United States* v. *Mississippi*, 229 F. Supp. 925, 995-997 (S.D. Miss. 1964) (Brown, J., dissenting) (describing Mississippi's response to previous litigation), rev'd, 380 U.S. 128 (1965); *United States* v. *Louisiana*, 225 F. Supp. 353, 392-393 (E.D. La. 1963) (Wisdom, J.) (noting Louisiana had adopted a "good citizenship" test in case its test of understanding state constitution was invalidated), aff'd, 380 U.S. 145 (1965); *United States* v. *Penton*, 212 F. Supp. 193, 201-202 (M.D. Ala. 1962) (Johnson, J.) ("In spite of [two] prior judicial declarations," Alabama "continues in the belief that some contrivance may be successfully adopted and practiced for the purpose of" depriving blacks of franchise); David J. Garrow, *Protest at Selma* 12-29 (1978) (reviewing historical evidence showing ineffectiveness of 1957 Act).

evil to its victims." *South Carolina*, 383 U.S. at 328. It did so by "suspend[ing] new voting regulations [in covered jurisdictions] pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment." *Id.* at 334.[5] Under appellee's view of Section 5, however, if the Justice Department successfully sued to enjoin enforcement of a covered jurisdiction's racially discriminatory voting practice as violative of the Fifteenth Amendment, and the jurisdiction then responded with a different practice that was intended to have, and did have, precisely the same (or a slightly less) invidious effect on blacks' voting rights in violation of the Fifteenth Amendment, then the Attorney General would be required to preclear that new practice.

Nothing in the legislative background to Section 5 suggests that Congress anticipated or desired that the Attorney General preclear newly adopted voting practices that violated the Constitution as long as the new practices were intended merely to hold the line against additional black registration or participation in elections. To the contrary, as the Court explained in *South Carolina*, Section 5 requires "the suspension of all new voting regulations pending review by federal authorities to determine whether their use would *perpetuate* voting discrimination." 383 U.S. at 316 (emphasis added); see *id.* at 335 (Congress intended Section 5 to

[5] See also H.R. Rep. No. 439, *supra*, at 26 (covered jurisdiction must show that new practice "does not have the purpose and will not have the effect of denying or abridging rights guaranteed by the 15th amendment"); S. Rep. No. 162, *supra*, at 24 (same); 1965 House Hearing, *supra*, at 90 (Attorney General Katzenbach, explaining that, under Section 5, voting changes could be precleared quickly "if there was no reason to believe that those laws were in violation of the 15th amendment").

prohibit jurisdictions from "contriving new rules of various kinds for the sole purpose of *perpetuating* voting discrimination") (emphasis added).

Furthermore, when Congress reenacted Section 5 in 1970 and 1982, the relevant committees explained that Section 5 review continued to be necessary to prevent the *perpetuation* and *maintenance* of voting discrimination through adoption of new voting regulations.[6] Indeed, one of Congress's specific concerns when it reenacted Section 5 was that covered jurisdictions that had previously prevented blacks from voting entirely had switched to more subtle methods of abridging minorities' voting rights, such as vote dilution through redistricting plans.[7] Congress retained the preclearance requirement to ensure federal review of cases in which covered jurisdictions abandoned blunt denials of minorities' right to vote in favor of permitting minorities to register and vote but intentionally diluting the value of their vote—a shift that may not be retrogressive but is unquestionably discriminatory and unconstitutional.[8] This shift would have come as no surprise to the Con-

[6] See H.R. Rep. No. 397, *supra*, at 7; S. Rep. No. 417, *supra*, at 14.

[7] See H.R. Rep. No. 397, *supra*, at 7; 116 Cong. Rec. 5521 (1970) (joint statement by members of Senate Judiciary Committee); H.R. Rep. No. 196, 94th Cong., 1st Sess. 10 (1975); S. Rep. No. 295, 94th Cong., 1st Sess. 18 (1975); H.R. Rep. No. 227, 97th Cong., 1st Sess. 6 (1981); S. Rep. No. 417, *supra*, at 6, 7 & n.8, 10-12.

[8] The Court has not definitively resolved whether intentional racial vote dilution violates the Fifteenth Amendment as well as the Fourteenth Amendment. See *Voinovich* v. *Quilter*, 507 U.S. 146, 159 (1993). When Congress reenacted Section 5, it made clear that the Act covers racially motivated voting changes, including intentional vote dilution, that violate the Fourteenth Amendment. See S. Rep. No. 417, *supra*, at 9-10 & n.19.

gress that enacted Section 5, for it knew that jurisdictions covered by the Act had resorted to "extraordinary stratagem[s]" to resist black enfranchisement in the past and had reason to suppose that they would "try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself." *South Carolina*, 383 U.S. at 335.

Thus, although there has been disagreement over "*how far beyond* the Constitution's requirements Congress intended [Section 5] to reach," neither Congress nor this Court has ever expressed doubt that Section 5's prohibition of discriminatory voting changes was intended "to reach *as far as* the Constitution itself." J.S. App. 57a (Breyer, J., concurring). To hold that the Attorney General and the courts must preclear voting changes enacted with a racially discriminatory (but not retrogressive) purpose would be to conclude that Section 5—the federal government's principal weapon in its arsenal against racial discrimination in voting —cannot reach what Congress understood to be its principal target: the perpetuation of intentional racial discrimination in voting that violates the Constitution.

2. This Court Has Construed Section 5 To Bar Voting Changes With A Discriminatory, But Not Retrogressive, Purpose

a. This Court has consistently held that a voting change enacted with the intent to discriminate against minorities must be denied preclearance under Section 5, whether or not the covered jurisdiction acted with a retrogressive intent. Most recently, in *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987), the Court denied preclearance to the annexation, by a city with an all-white population, of two parcels of land, one vacant and one inhabited only by a few white residents. The

Court affirmed the district court's ruling that the City of Pleasant Grove had failed to show that its annexations were untainted by a discriminatory purpose, *id.* at 469, even though it was agreed that the change could not possibly have been retrogressive of the position of black voters in the City at the time of the annexation, since there were no such black voters there, *id.* at 470-471. The Court squarely rejected the contention that "an impermissible purpose under § 5 can relate only to present circumstances," *id.* at 471, and affirmed the denial of preclearance on the basis of the City's "impermissible purpose of minimizing future black voting strength," *id.* at 471-472. "One means of thwarting this process [of black political empowerment]," the Court noted, "is to provide for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance. This is just as impermissible a purpose as the dilution of present black voting strength." *Id.* at 472. In reaching that conclusion, the Court rejected the argument, advanced in dissent, that, "for a city to have a discriminatory purpose within the meaning of the Voting Rights Act, it must intend its action to have a retrogressive effect on the voting rights of blacks." *Id.* at 474 (Powell, J., dissenting); see *id.* at 471 n.11 (opinion of the Court, rejecting dissent's position).[9]

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[9] Although the dissent in *City of Pleasant Grove* suggested that, "for a city to have a discriminatory purpose within the meaning of the Voting Rights Act, it must intend its action to have a retrogressive effect on the voting rights of blacks," 479 U.S. at 474, the principal point of the dissent was that the annexation of land by an all-white town could not, by definition, have been intended to have *any* effect on black voters, since there were no such black voters. The dissent took issue with what it stated to be the Court's reliance on the possibility that black voters might move

Similarly, in *City of Richmond* v. *United States*, 422 U.S. 358 (1975), the Court ruled that, if an annexation plan was motivated by a discriminatory purpose, it must be denied preclearance, even if the plan does not have a prohibited discriminatory effect on minorities' franchise. Although the Court concluded in that case that the annexation plan at issue did not have a prohibited *effect* on the position of minorities, it made clear the inquiry could not stop at that point, because the district court had found the annexation plan "was

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into the town in the future, suggesting that "such speculation in finding a discriminatory purpose on the part of a state actor is illogical and unprecedented." *Id.* at 476; see *id.* at 476-477 ("Where an annexation's effect on voting rights is purely hypothetical, an inference that the city acted with a motivation related to *voting* rights is unsupportable."). The harm to minority voting rights in this case obviously cannot be considered speculative or hypothetical, since blacks live and vote in Bossier Parish, and the record amply supports a conclusion that the 1992 plan dilutes their votes. See pp. 38-40, *infra*; C.A. No. 94-1495 Appellee Br. 21 (filed Oct. 23, 1997) (conceding on remand that "the [1992] School plan did dilute black voting strength"); J.S. App. 118a-119a (Kessler, J., dissenting) (concluding that the 1992 plan "effectively prevents black voters from electing candidates of their choice to the School Board").

The dissent in *City of Pleasant Grove* also cited *City of Lockhart* v. *United States*, 460 U.S. 125 (1983), for its analysis of the purpose prong of Section 5. In *City of Lockhart*, however, the Court had no occasion to consider the purpose prong of Section 5; because the district court in that case had denied preclearance under Section 5's effect test alone, "it was unnecessary for the District Court to reach the issue of discriminatory purpose." *Id.* at 130 & n.4; see *id.* at 133 (addressing whether city's new charter had "the effect of denying or abridging the right to vote guaranteed by § 5"). Since the Court remanded the case to the district court for further proceedings, *id.* at 136, it evidently anticipated that the district court would address the issue of purpose on remand.

infected by the impermissible purpose of denying the right to vote based on race through perpetuating white majority power to exclude Negroes from office through at-large elections." *Id.* at 373. The Court remanded for further proceedings on the issue of the City of Richmond's intent, and it stressed that, even though the ultimate effect of the annexation might have been permissible, nonetheless "[a]n official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color." *Id.* at 378; see also *City of Port Arthur* v. *United States*, 459 U.S. 159, 168 (1982) (relying on *City of Richmond* to hold that, even if electoral scheme might reflect political strength of a minority group and therefore pass "effect" test, "the plan would nevertheless be invalid if adopted for racially discriminatory purposes").

This Court's summary affirmance of the district court's denial of preclearance in *Busbee* v. *Smith*, 549 F. Supp. 494, 516 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983), also holds that a voting change must be denied preclearance if it was enacted with a discriminatory purpose, even if that purpose was not necessarily retrogressive. The redistricting plan at issue in *Busbee* was concededly not retrogressive in effect, and in fact it increased black voting strength somewhat. *Id.* at 516. The district court, however, relying upon evidence of Georgia's intent to avoid the creation of a majority-black district in the Atlanta area, denied Section 5 preclearance. *Id.* at 516-518. The court explained that the redistricting plan was "being denied Section 5 preclearance because State officials successfully implemented a

scheme designed to minimize black voting strength to the extent possible, [and] the plan drawing process was not free of racially discriminatory purpose." *Id.* at 518. It therefore denied preclearance squarely on a finding that Georgia had acted with a discriminatory, but not retrogressive, intent.

In its appeal from the district court's judgment, Georgia included the following question in its jurisdictional statement: "Whether a Congressional reapportionment plan that does not have the purpose of diminishing the existing level of black voting strength can be deemed to have the purpose of denying or abridging the right to vote on account of race within the meaning of Section 5 of the Voting Rights Act." J.S. at i, *Busbee* v. *Smith*, 459 U.S. 1166 (1983); see *id.* at 22. In response, the government noted that "[t]he core of [the State's] argument is that the only discriminatory purpose that violates Section 5 is a purpose to * * * cause retrogression," and argued that this reading of Section 5 was foreclosed by *City of Richmond*, *supra*. See Gov't Mot. to Aff. at 4-6, *Busbee* v. *Smith*, *supra*. Thus, this Court's summary affirmance in *Busbee* necessarily rejected the contention that a voting plan enacted with a nonretrogressive, yet discriminatory, purpose may be precleared.

In addition, in *Beer* v. *United States*, 425 U.S. 130, 141 (1976), the Court stated that even an ameliorative election plan can violate Section 5 if it "so discriminates on the basis of race or color as to violate the Constitution"; see also *id.* at 142 n.14 (noting that "[i]t is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional"). Appellee acknowledges that

Beer "suggests that any changes that violate the Constitution also violate Section 5." Mot. to Aff. 24 (internal quotation marks omitted). Congress has reached the same conclusion, for that part of *Beer* was expressly noted with approval in the definitive Senate Report accompanying Congress's 1982 extension of Section 5 without change. See S. Rep. No. 417, *supra*, at 12 n.31; see also *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986) (noting that the Senate Report is the "authoritative source" of the legislative history for the 1982 extension of the Act). Congress's reenactment of Section 5 without changing its applicable standard amounts to a codification of the Court's reading of Section 5 in *Beer*.[10]

b. Appellee has argued (Mot. to Aff. 21) that, because the Court in *Beer* limited the "effect" prong of Section 5 to retrogressive effects, the "purpose" prong must necessarily be limited to an intent to cause retrogression. That argument, however, overlooks both the function played by the effect prong of Section 5 and many of the concerns that animated the Court's construction of it in *Beer*.

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[10] Appellee has acknowledged (Mot. to Aff. 24) that the Senate Report expressly approved the Court's discussion of "purpose" in *Beer*, but it argues that the Court rejected reliance on the same Senate Report on the prior appeal in this case (see J.S. App. 42a). On the prior appeal, the Court concluded that one aspect of the Senate Report was unreliable as an indicator of congressional intent because it was *contrary* to the Court's earlier construction of Section 5 in *Beer*; the Court expressed doubt that, when Congress reenacted Section 5 without change, it would have silently disapproved the Court's decision in *Beer* without amending the statutory language. *Ibid.* The issue on this appeal, however, involves Congress's *approval* of a different part of the Court's decision in *Beer*, which deserves great weight.

As this Court explained in *City of Rome*, Congress in Section 5 prohibited the implementation of voting changes that have a retrogressive effect, even if they do not violate the Constitution itself, because for many years the covered jurisdictions had imposed devices to effect voting discrimination, and had successfully impeded the ability of racial minorities to exercise the electoral franchise effectively. See 446 U.S. at 176. A nonretrogression principle was necessary to ensure that further voting changes did not retard minorities' progress in overcoming that past discrimination. See *id.* at 177-178; see also *South Carolina*, 383 U.S. at 334 (suspension of tests and devices necessary to remedy past discrimination because they could "freeze the effect of past discrimination"); *Lopez* v. *Monterey County*, 119 S. Ct. 693, 703 (1999) (reaffirming that "the Act may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws" in a covered jurisdiction).

The Court has also recognized, however, that allowing a voting practice (or, indeed, any official action) to be subject to challenge solely because it has a discriminatory effect has implications that are potentially very broad. In *Beer*, for example, the Court noted that the district court had applied the concept of "discriminatory effect" to rule, in effect, that blacks were entitled to proportional representation. See 425 U.S. at 136 & n.8. Indeed, in the same Term as *Beer*, the Court decided *Washington* v. *Davis*, 426 U.S. 229 (1976), which held that proof of discriminatory purpose is necessary to establish a violation of the Equal Protection Clause of the Fourteenth Amendment. In rejecting the contention that a discriminatory effect alone is sufficient to establish a constitutional violation, the Court emphasized in *Davis* that such a broad-ranging constitutional

rule "would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." *Id.* at 248.

The same concerns, however, are not raised by a construction of Section 5 that prohibits enforcement of voting changes enacted with a purpose to discriminate against minorities. Such a rule does not preclude any voting practice per se; it simply requires that state actors not adopt practices with a discriminatory intent. Cf. *Rogers*, 458 U.S. at 617 (reaffirming that at-large voting systems are not unconstitutional per se, but also holding that they may not be used for the purpose of vote dilution).

The Court has also observed that Section 5—and in particular, its effect prong, which bars enforcement of many voting practices that are not actually unconstitutional—"imposes substantial federalism costs." *Lopez*, 119 S. Ct. at 703 (internal quotation marks omitted). Limiting Section 5's effect prong to cases of retrogression cabins those federalism costs substantially, for a construction of the statute's "discriminatory effect" provision not limited by the principle of retrogression might have substantially interfered with the States' ability to implement election laws that do not offend the Constitution. But there are far fewer federalism costs to a reading of Section 5 that precludes enforcement of voting practices motivated by intentional racial discrimination (even if that motivation is not retrogressive). Such practices violate the Constitution itself, and

therefore may not be legitimately enforced.[11] The principal federalism costs imposed by Section 5 in a case of *intentional* racial discrimination involve the requirement of preclearance and the shifting of the burden of proof to the covered jurisdiction to show that the voting practice does not have a discriminatory purpose. But the Court long ago sustained those aspects of Section 5 as necessary to combat "persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in [such] lawsuits." *South Carolina*, 383 U.S. at 328; see *Lopez*, 119 S. Ct. at 703.

3. The Attorney General's Construction Of Section 5 Is Entitled To Deference

Finally, the Attorney General's construction of Section 5 as prohibiting preclearance of voting changes enacted with an unconstitutional discriminatory purpose (whether or not that purpose is retrogressive) is entitled to deference. The Attorney General has consistently followed that construction. In more than 30 years of enforcement of the Voting Rights Act, the Department of Justice has *always* read Section 5 to require covered jurisdictions to establish that their voting changes were enacted without an unconstitutionally discriminatory purpose, and it has *never* limited its purpose analysis on preclearance review to a search for

[11] See *City of Richmond*, 422 U.S. at 378 (official action "taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution"); *Arlington Heights*, 429 U.S. at 265-266 ("When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.").

"retrogressive intent."[12] The Attorney General's published procedures for Section 5 submissions do not even recognize the concept of "retrogressive intent," but rather make clear that "the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution." 28 C.F.R. 51.55(a). That longstanding and consistent construction of Section 5 by the Attorney General is entitled to "particular deference" in light of her "central role" in administering Section 5. See *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 39 (1978); *Lopez*, 119 S. Ct. at 702.

B. Bossier Parish School Board's 1992 Redistricting Plan Was Enacted With An Unconstitutional, Racially Discriminatory Purpose

1. Proper Analysis Of The Board's Adoption Of The 1992 Plan Under The *Arlington Heights* Framework Shows That The Board Had A Discriminatory Purpose

Appellee has the burden to prove the absence of discriminatory purpose behind the 1992 plan. *City of Rome*, 446 U.S. at 183 n.18. The Court has instructed that, in analyzing "whether invidious discriminatory purpose was a motivating factor" for a voting change, courts should employ the framework of *Arlington Heights*, *supra*. See J.S. App. 48a; cf. *Rogers*, 458 U.S. at 618 (using same framework to evaluate claim of intentional vote dilution). That framework directs the courts to consider, in particular, whether the official ac-

[12] The Attorney General has also consistently taken that position in litigation. See Gov't Mot. to Aff. at 5-6, *Busbee*, *supra*; U.S. Br. at 22-24, *City of Pleasant Grove*, *supra*.

tion "bears more heavily on one race than another"; the "historical background of the [jurisdiction's] decision"; the "specific sequence of events leading up to the challenged decision"; "[d]epartures from the normal procedural sequence" and "substantive departures"; and "[t]he legislative or administrative history," especially "contemporary statements by members of the decisionmaking body." J.S. App. 49a; *Arlington Heights*, 429 U.S. at 266-268. Under that analysis, which was faithfully applied to this case by Judge Kessler (see J.S. App. 23a-26a, 117a-134a), "the only conclusion that can be drawn * * * is that [appellee] acted with discriminatory purpose" (*id.* at 134a).

a. *Historical Background.* There is a well-documented history of racial discrimination affecting blacks in Bossier Parish, including discrimination by the School Board, continuing into the present. As the parties stipulated (J.S. App. 210a-214a), before passage of the Voting Rights Act, Louisiana employed numerous tests and devices to prevent blacks from voting. The Attorney General in 1967 designated Bossier Parish for the appointment of federal voting examiners under Section 6 of the Act, and subsequently denied preclearance to a number of voting changes enacted by the state legislature because of their dilutive effect on black voting rights in the Parish. See *id.* at 214a-216a.[13] In 1991, the Police Jury (which has never drawn a majority-black district) again adopted a districting plan with no majority-black district even though it was "obvious" at the time that at least one reasonably compact majority-black district could have been drawn, and yet members of the Police Jury told the public that no such district could be drawn. *Id.* at 146a-147a, 154a-155a, 161a-162a.[14]

[13] In one case, a district court enjoined the use of multi-member districts in the Bossier Parish area for the state legislature, and referred to the plan as "gerrymandering in its grossest form." J.S. App. 215a.

With respect to the School Board in particular, even after the federal courts ordered the Board to dismantle its segregated school system (which survived *Brown* by over a decade), the Board resisted. The Board disregarded a court order to maintain a biracial committee to recommend ways to attain and maintain a unitary school system. J.S. App. 182a-183a. It also attempted to evade the desegregation order by segregating black children of personnel at the local Air Force Base and implementing an unconstitutional "freedom of choice" plan. The Board has reduced the percentage of the black teachers in the school district by a third (to less than 10% from 14% of the total), and has disproportionately assigned those teachers to schools with mostly black students. Schools in the Parish have also become increasingly segregated by race, despite the Board's affirmative duty to desegregate; in 1993-1994, four of the 16 regular elementary schools had predominantly black enrollment and five had student enrollments that were more than 80% white. *Id.* at 216a-218a.

This Court found a similar history of official discrimination, followed by resistance to improvement in the

[14] The Police Jury plan in fact fragments well-established black communities bordering on the town of Benton and within Bossier City. J.A. 154-156. Further, some of the districts in the Police Jury plan are not compact, J.S. App. 191a; that plan also required the splitting of existing precincts, and was not the plan before the Police Jury with the fewest precinct splits. *Id.* at 167a-168a. The plan also departs from Louisiana law in that it lacks contiguity at one point and its population deviation exceeds plus or minus five percent. J.A. 233-235.

position of minorities, to be highly probative of discriminatory intent in *Rogers*, 458 U.S. at 622-626. In support of its holding, the *Rogers* Court cited such evidence as past voting discrimination, which contributed to low black voter registration, and a racially segregated school system. *Id.* at 625. The Court stressed that historical evidence of discrimination is particularly relevant when "the evidence shows that discriminatory practices were commonly utilized, that they were abandoned when enjoined by courts or made illegal by civil rights legislation, and that they were replaced by laws and practices which, though neutral on their face, serve to maintain the status quo." *Ibid.* That is the case here. Even the district court acknowledged that the Board had shown a "tenacious determination to maintain the status quo." J.S. App. 7a.

b. *Sequence Of Events Leading Up To The Decision.* Especially probative in this case is the sequence of events leading up to the Board's adoption of the Police Jury plan for its own purposes. That course of events convincingly demonstrates that, absent an intent to still black voters' efforts to obtain representation on the Board, appellee would not have adopted the Police Jury plan. When the Board first met with its cartographer (Gary Joiner) in May 1991, no one suggested adopting the plan that the Police Jury had just adopted, which is not surprising, since the Police Jury plan was unsuitable for the Board's priorities in districting–namely school locations and incumbency protection. J.S. App. 151a, 171a, 181a, 191a. At the May 1991 meeting, Joiner estimated that preparing a redistricting plan would take him 200-250 hours, *id.* at 173a, far longer than would be necessary to recycle the Police Jury plan.

When the Board met again with Joiner in September 1991, Joiner provided the Board with precinct maps be-

cause, he explained, the Board would need to work with the Police Jury to alter precinct lines for its own plan (which would have been unnecessary if the Board had intended to adopt the Police Jury plan). J.S. App. 174a. At that meeting, Board Member Myrick—who stood to benefit from the Police Jury plan because his district, which contained the largest concentration of black voters under the preexisting plan, would remain majority-white—suggested adopting that plan. The Board did not take that course. As appellee observed below, Board members "in redistricting fight savagely to keep their pet schools in their new districts," C.A. No. 94-1495 Appellee Br. 6 n.2 (filed Oct. 23, 1997), and "[s]ome of the [Board] members were unhappy with the Police Jury plan because their pet schools were situated outside their new districts," *id.* at 10-11.

Over the following year, Board members met privately with Joiner to discuss various redistricting scenarios. J.S. App. 125a-126a, 176a. Despite requests from the local branch of the NAACP to be included in the redistricting process, the Board gave no notice of such private meetings. *Id.* at 176a. Frustrated at the Board's unresponsiveness, the NAACP developed a plan showing two majority-black districts. *Id.* at 177a. After being told by Joiner that any proposed plan must include all 12 election districts, the NAACP presented such a plan with two majority-black districts on September 3, 1992. J.A. 175-176; J.S. App. 177a-178a.

Only then did the Board become roused to action. On September 17, 1992, "without any further consultation with its cartographer or attempt to address the concerns of the black community, the School Board passed a motion of intent to adopt the Police Jury plan, which had no majority-black districts." J.S. App. 127a. The Board found new favor in the Police Jury plan, even

though it pitted two pairs of Board incumbents against each other and did not allocate schools among the districts to Board members' satisfaction, in direct contradiction of the Board's traditional districting priorities. The Board adopted the Police Jury plan at its next meeting, even after a public hearing attended by an overflow crowd, at which not a single person spoke in favor of the plan. *Ibid.* As Judge Kessler observed, "[t]he fact that the Board adopted a plan which departs substantively from its earlier districting plans and which ignores factors it has usually considered of paramount concern, is probative of discriminatory purpose." *Id.* at 129a. Even the majority agreed that "[e]vidence in the record tending to establish that the board departed from its normal practices * * * establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Id.* at 7a.[15]

c. *Dilutive Impact Of The Plan.* The record compiled in the district court amply establishes that the 1992 plan had a particularly adverse impact on black voters. In fact, appellee conceded on remand that "the

[15] Both this Court and Congress have found such departures to be highly probative of discriminatory intent. See *Arlington Heights*, 429 U.S. at 267 (explaining that departures from substantive considerations are relevant "particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached," and suggesting that, if in that case, the town had switched zoning classifications only when "[it] learned of [the developer]'s plans to erect integrated housing," that would have presented a "far different case"); S. Rep. No. 417, *supra*, at 10 (explaining that preclearance remedy continued to be necessary because jurisdictions were "depart[ing] from past practice as minority voting strength reaches new levels").

School plan did dilute black voting strength." C.A. No. 94-1495 Appellee Br. 21 (filed Oct. 23, 1997). The record corroborates that concession. Under *Thornburg* v. *Gingles*, *supra*, three factors are particularly relevant to establishing vote dilution: (1) the racial minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the group must be politically cohesive; and (3) the white majority must vote sufficiently as a bloc to usually defeat the minority's preferred candidate. 478 U.S. at 50-51. The record, including the parties' stipulations, established each part of the *Gingles* test. J.S. App. 154a-155a, 192a-194a, 196a-207a.

First, in 1990, black persons comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. J.S. App. 145a-146a. The black population of the Parish is concentrated in two areas: more than 50% of it lives in Bossier City, and the remaining black residents are concentrated in four identifiable populated areas in the northern rural portion of the Parish. *Id.* at 146a-147a. Contiguous, reasonably compact majority-black districts can be drawn in those areas using traditional redistricting features. *Id.* at 154a-155a, 192a-194a.[16]

Second, the history of elections in the Parish showed both the black community's political cohesion and ra-

[16] The record also shows that Board members were well aware of facts establishing the potentially dilutive impact of the plan. Board members knew where the black population of the Parish lived; some of them explained the increasing racial segregation in the Parish's schools on the ground that predominantly black schools were located in predominantly black neighborhoods. J.A. 94-100, 104, 109-110, 113-124; see also J.S. App. 154a-155a (stipulation that it was "obvious" that majority-black district could have been drawn in Bossier City).

cially polarized voting, resulting in a pattern in which the majority, white voters, prevented the election of the black community's representatives to the Board. The presence of racially polarized voting was recognized in the community and among elected officials. See J.A. 70-71, 130, 132, 134, (testimony by Board Member Jerome Blunt, Police Juror Jerome Darby, Bossier City Councilmember Jeff Darby, and recognition in local press); J.S. App. 201a (Police Juror Burford's estimation that 80% of black and white voters chose candidates of their own race; stipulation that, "[t]o some extent, voting patterns in Bossier Parish are affected by racial preferences"). Before 1992, black candidates had run for the School Board on at least four occasions, but none had been elected. *Id.* at 195a-196a. Further, with few exceptions owing to unusual circumstances, black voters had also been unable to elect candidates of their choice to other political positions in the Parish. *Id.* at 196a-201a. Statistical analysis of elections in which black candidates ran against white candidates disclosed that many were affected by racial bloc voting, *id.* at 202a-207a, and that "African American voters are likely to have a realistic opportunity to elect candidates of their choice * * * only in districts in which they constitute a majority of the voting age population." J.A. 174. Indeed, where black persons comprise 20% of the population, "it is sensible to expect" that at least some black representatives would have been elected to one of the Board's 12 single-member districts before the 1992 redistricting plan was adopted, and "the fact that none [had] ever been elected" is important evidence of purposeful discrimination. *Rogers*, 458 U.S. at 623-624.

d. *Contemporaneous Statements.* Finally, contemporary statements by members of the Board support a finding of discriminatory intent. Member Henry Burns

told one witness who testified at trial that, although he personally favored "having black representation on the board, other school board members oppose[d] the idea." J.S. App. 83a n.4. Member Barry Musgrove told appellant Price that "the Board was 'hostile' toward the idea of a black majority district." *Ibid.* Tom Myrick also told two of the intervenors, after a meeting at which black community representatives had raised concerns about unequal funding for computer purchases at predominantly black schools, that "we [the African Americans] were always trying to take his seat and * * * he was not going to let us take it away from him." J.A. 212; see J.A. 182-183; J.S. App. 83a n.4. "[C]onsidered in the context of the School Board's discriminatory past, * * * th[ose] statements add further proof of improper motive," and "it seems fair to conclude that at least some School Board Members were openly 'hostile' to black representation on the school board." *Id.* at 133a.

In sum, applying *Arlington Heights* to the record permits only one conclusion: when the Board adopted the Police Jury plan as its own redistricting plan, it acted with the unconstitutional, racially discriminatory purpose to deny black voters a fair opportunity to elect candidates of their choice to the School Board.

2. To The Extent The District Court May Have Ruled That The Board Acted Without A Discriminatory Purpose, That Conclusion Cannot Be Sustained

a. Despite the impressive evidence showing that the Board acted with discriminatory intent in adopting its redistricting plan, appellee argues (Mot. to Aff. 15) that the district court actually found that the plan was free even of a discriminatory, but nonretrogressive purpose. That argument is based on two cursory sentences in the

district court's opinion on remand.[17] While the meaning of those sentences is decidedly uncertain, they are best read only as stating that the court would not decide whether appellee acted with a discriminatory intent, not that it decided that appellee had acted without a discriminatory intent. Indeed, just after those sentences, the lower court proceeded to explain that "[t]he question we will answer, accordingly, is whether the record disproves [appellee's] retrogressive intent in adopting the [Police] Jury plan." J.S. App. 4a.

Moreover, to the extent the district court's opinion might be read as concluding that appellee had acted without any discriminatory intent, that conclusion cannot be sustained on appeal. This Court has admonished that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," *Arlington Heights*, 429 U.S. at 266, and has set forth a framework for analyzing evidence of discriminatory intent, *id.* at 266-268; J.S. App. 48a-49a. The district court's comment about the existence *vel non* of a discriminatory purpose, however, was unaccompanied by any discussion of the *Arlington Heights* framework or any analysis of the evidence under it. As Judge Kessler pointed out, the majority discussed the *Arlington Heights* factors "only for the

[17] Specifically: "We are not certain whether or not we have been invited to answer the question the Court left for another day [*i.e.*, whether a discriminatory but nonretrogressive purpose bars preclearance under Section 5], but we decline to do so in this case, because the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent. We can imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory purpose,' but those imagined facts are not present here." J.S. App. 3a-4a.

purpose of finding evidence of *retrogressive* intent." J.S. App. 24a (emphasis added). Thus, even when the majority did apply the *Arlington Heights* factors, it followed its findings establishing that the Board did not want blacks in the Parish to improve their voting strength with a statement that such evidence did not show intent to *retrogress*. See pp. 12-14, *supra*; J.S. App. 5a-8a. Because the lower court failed to apply the *Arlington Heights* factors to the broader question of discriminatory but nonretrogressive intent, any finding that it may have made on that point is not entitled to deference under the "clearly erroneous" rule of Federal Rule of Civil Procedure 52(a). See *Schneiderman* v. *United States*, 320 U.S. 118, 129-130 (1943) (declining to follow district court's findings because they were "but the most general conclusions of ultimate fact," and it was "impossible to tell from them upon what underlying facts the court relied, and whether proper statutory standards were observed").[18]

Furthermore, any conclusion that appellee's adoption of the plan was free of a discriminatory purpose would be manifestly contrary to the weight of the evidence, as well as the district court's own findings. The court readily acknowledged that appellee was motivated by a "tenacious determination to maintain the status quo."

[18] See also *Sanchez* v. *Colorado*, 97 F.3d 1303, 1316 (10th Cir. 1996) ("Broad and general findings, not explicitly tethered to any particular testimony—especially in the [Voting Rights Act] context which demands penetrating case by case, fact bound analysis—simply do not provide the foundation for proper appellate review."), cert. denied, 520 U.S. 1229 (1997); *Westwego Citizens for Better Gov't* v. *City of Westwego*, 872 F.2d 1201, 1203-1204 (5th Cir. 1989) (district court's findings "manifestly inadequate" because they were "stated in conclusory fashion, with virtually no reference to the evidence presented at trial").

J.S. App. 7a. It also accepted that the record "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Ibid.* The lower court's previous decision in this case also recognized that the Board had initially disliked the Police Jury plan for valid reasons, and that it turned to that plan only after the redistricting process "began to cause agitation within the black community." *Id.* at 106a. Thus, while the district court characterized the 1992 plan as a "close port" available in a "storm," *ibid.*, the "storm" was actually the Board's realization that the black community was seeking improvement in its political position, something the Board was determined to oppose.[19] That determination to maintain a status quo that diluted the voting strength and minimized the political effectiveness of blacks in Bossier Parish is a discriminatory purpose in violation of the Constitution. See *Rogers*, 458 U.S. at 617.

b. In rejecting a finding of retrogressive intent, the district court suggested that appellee had advanced two

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[19] Indeed, it is difficult to see how adoption of the Police Jury plan could be justified as helping appellee avoid controversy. To the contrary, the facts show that adoption of that plan only exacerbated controversy. On September 17, 1992, the Board informed the public that it passed a motion of intent to adopt the Police Jury plan. On September 24, 1992, the black community protested the adoption of that plan, and the NAACP presented a petition with signatures of 500 people opposing the plan's adoption. On October 1, 1992, without considering alternative ways to draw a plan with even one majority-black district, the Board nonetheless approved the plan. J.S. App. 179a-181a. The "storm" that the Board was seeking to avoid was not an abstract controversy about redistricting, but rather increasing assertiveness by blacks in Bossier Parish about their voting rights.

"legitimate, non-discriminatory" explanations for choosing the Police Jury plan rather than the NAACP plan—"guaranteed preclearance" by the Attorney General and "easy implementation" (because no precinct lines would need redrawing under the Police Jury plan). J.S. App. 5a, 106a. The court's statement that those justifications were "legitimate" and "non-discriminatory," however, was predicated on its erroneous truncation of its legal analysis to the issue of retrogressive intent, and therefore is not entitled to deference on appeal. See *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U.S. 485, 501 (1984) ("Rule 52(a) does not inhibit an appellate court's power to correct * * * a finding of fact that is predicated on a misunderstanding of the governing rule of law."). The record clearly demonstrates, moreover, that the proffered justifications were pretextual.

Appellee's hope for "guaranteed preclearance" of the 1992 plan is plainly insufficient, for once an alternative plan with majority-black districts was presented to it, the Board could not reasonably have believed that a plan which ameliorated the existing vote dilution would be *less* likely to receive preclearance than the Police Jury plan. The record also shows that guaranteed preclearance did not in fact induce the Board to adopt the Police Jury plan. Since the plan was precleared for Police Jury elections on July 29, 1991, the Board could have adopted it when it was first proposed on September 5, 1991, or anytime over the next year, yet it continued the process of developing another plan for more than a year. See pp. 6-8, *supra*. On the other hand, the Board had important reasons to enact a different plan, for the Police Jury plan did not protect the incumbencies of four Board members and was not drawn with school locations in mind. See pp. 6-7, *supra*.

Concerns over splitting precincts also did not motivate the Board to adopt the Police Jury plan. There is no evidence that the Board was concerned about preserving precincts before the black community began to request that a majority-black district be drawn. In fact, the Board had anticipated splitting precincts from the beginning of its redistricting process, in order to adopt a plan different from the Police Jury plan that would best serve its legitimate objectives (including preserving the seats of incumbents, a goal that was later sacrificed in the 1992 plan). J.S. App. 174a. The parties also stipulated that school boards may request that the Police Jury realign the Parish's precincts— a process that is both legal and common in Louisiana. *Id.* at 151a. But when the NAACP presented its plan with two majority-black districts, Joiner and the Bossier Parish district attorney asserted (contrary to their knowledge of state law) that the NAACP plan could not be considered because its district lines crossed existing precinct lines, and therefore, would violate state law. *Id.* at 179a.

Finally, even if the district court were correct that the Board's proffered reasons for its adoption of the 1992 plan were not pretextual, the court's decision to preclear the plan would still be erroneous as a matter of law, because the record and the court's own findings make clear that the Board *also* acted with a discriminatory intent in adopting the 1992 plan. A jurisdiction seeking preclearance of a voting change has the burden of proving the *absence* of discriminatory purpose on its part. *City of Pleasant Grove*, 479 U.S. at 469. Because the presence of a discriminatory purpose requires denial of preclearance, a jurisdiction's election plan is not entitled to preclearance if a discriminatory purpose significantly contributed to the adoption of the plan. The

fact that the jurisdiction may have had some legitimate reason for enacting the plan does not permit the court to ignore its discriminatory motivation in doing so. Cf. 42 U.S.C. 2000e-2(m) (Title VII is violated when race "was a motivating factor for any employment practice, even though other factors also motivated the practice").

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APPENDIX

1. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> SECTION 1. * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

2. The Fifteenth Amendment to the United States Constitution provides:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

3. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, provides in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory

judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure; *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

* * * * *

Supreme Court, U.S.
FILED
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CLERK

(10) (8)

Nos. 98-405 and 98-406

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOLUME 1)

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NOTICES OF APPEAL FILED: July 6, 1998
PROBABLE JURISDICTION NOTED: January 22, 1999

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C. District court's opinion dated Nov. 2, 1995 ..... J.S. App. 78a
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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 94cv1495

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, FEDERAL DEFENDANT,

GEORGE PRICE, AND NINE OTHERS
INTERVENOR-DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
1994		
July 8	1	ORDER by Chief Judge John G. Penn : authorizing James J. Thornton, Jr. to appear in this Court in behalf of Bossier Parish for the sole and limited purpose of representing the School Board in its request for a declaratory judgment approving its redistricting plan as being in conformity with the Voting Rights Act of 1965 and the Constitution of the United States. (N) (jeb) [Entry date 07/14/94]

DATE	DOCKET NUMBER	PROCEEDINGS
July 8	2	COMPLAINT filed by plaintiff(s) BOSSIER PARISH (jeb) [Entry date 07/14/94]
July 8	—	SUMMONS(2) issued to federal party(s) defendant JANET RENO, and non-parties: U.S. Attorney and U.S. Attorney General. (jeb) [Entry date 07/14/94]
July 14	—	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
July 14	—	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
July 25	3	ORDER by Judge Charles R. Richey : directing Clerk of Court to make copies of the complaint and this order and provide them to the U.S. Marshals' Service for service of same upon the AUSA; directing AUSA to show cause why this case is cognizable in this Court and whether a three-Judge Court should be convened. ., and response to show cause due 4:00 7/29/94; (N) (jeb)

DATE	DOCKET NUMBER	PROCEEDINGS
July 26	—	SHOW CAUSE issued to defendant JANET RENO (James Thornton, Office of Asst. Attorney General). (dbw) [Entry date 07/28/94]
July 29	5	RESPONSE by defendant JANET RENO to Court's show cause order [4-1] (cjp) [Entry date 08/03/94]
Aug. 1	4	ORDER by Judge Charles R. Richey : directing that pursuant to 42 USC 1973c, a Three Judge District Court shall be convened to hear and determine this action for declaratory judgment under Section of the Voting Rights Act of 1965, as amended; referring case to the Chief Judge of the USCA for appointment of the other two members of the three judge panel. (N) (jeb)
Aug. 5	6	COPY of Order filed in USCA dated 8/4/94, designating Laurence H. Silberman, Circuit Judge, Gladys Kessler, District Judge, to serve with Charles R. Richey, District Judge, to hear and determine this action. (gt)

DATE	DOCKET NUMBER	PROCEEDINGS
Aug. 5	—	CASE ASSIGNED to Three Judge Panel consisting of: District Judge Charles R. Richey, Circuit Judge Laurence H. Silberman and District Judge Gladys Kessler. (gt)
Aug. 11	7	RETURN OF SERVICE/ AFFIDAVIT executed upon Asst. U. S. Attorney General on 8/8/94 (lpp) [Entry date 08/17/94]
Aug. 11	8	RETURN OF SERVICE/AFFIDAVIT executed on 8/3/94 upon James J. Thornton, Esquire, pursuant to Court Order. (lpp) [Entry date 08/17/94]
Aug. 22	—	STATUS HEARING before Judge Charles R. Richey & Judge Gladys Kessler: discovery due 10/14/94; plaintiff's dispositive motions due 4:00 10/26/94; defendant and applicant intervenor defendant's response to dispositive motions due 4:00 11/9/94; plaintiff and defendant to file views on the aspect of the South Carolina Case due 8/24/94 by 4:00 p.m.; applicant intervenor defendant to file views on case on 8/26/94 by 4:00 p.m. Reporter: Frank Rangus (jeb)

DATE	DOCKET NUMBER	PROCEEDINGS
Aug. 22	9	MOTION filed by movant GEORGE PRICE and (9) nine others for leave to intervene Attachments (2), EXHIBIT: ANSWER (lpp) [Entry date 08/24/94]
Aug. 23	10	MEMORANDUM by defendant JANET RENO; attachments (5) (clv) [Entry date 08/25/94]
Aug. 23	11	TRANSCRIPT filed for date(s) of 08/22/94. Reporter: Frank Rangus (jeb) [Entry date 08/26/94] [Edit date 08/26/94]
Aug. 23	13	MEMORANDUM by defendant JANET RENO response to this Court's inquiry at the 8/22/94, status conference as to why this Court should not enter injunctive relief, Exhibit (A), Attachments (6) (lpp) [Entry date 08/30/94]
Aug. 25	12	MEMORANDUM by plaintiff(s) BOSSIER PARISH on enjoining proceedings in the Middle District of Louisiana in Knight, et al. v. McKeithen, et al. (jeb) [Entry date 08/26/94]
Aug. 26	15	MEMORANDUM by movant GEORGE PRICE for intervention, Exhibit (1) (lpp) [Entry date 09/07/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Aug. 31	14	ORDER by Judge Charles R. Richey: discovery due 4:00 10/14/94; directing the plaintiff and defendant file briefs on injunction issue due 4:00 p.m. 8/24/94; prospective intervenors to file brief on injunction issue due 8/26/94; granting plaintiff leave to file its brief on injunction issue by facsimile; plaintiff to file briefs and dispositive motions due 4:00 10/26/94; defendant and prospective intervenors to file their briefs and dispositive motions due 4:00 11/9/94; directing parties to submit direct testimony in narrative form (N) (jeb)
Sept. 8	16	MEMORANDUM OPINION by Judge Charles R. Richey (N) (jeb)
Sept. 8	17	ORDER by Judge Charles R. Richey : granting motion for leave to intervene [9-1] by GEORGE PRICE; advising counsel that the Court shall not issue an injunction at this time, but the Court may revisit this issue at a future time, as may be appropriate. (N) (jeb)
Sept. 8	21	ANSWER by Defendants-Intervenors TO COMPLAINT [2-1]. (lpp) [Entry date 09/29/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Sept. 13	18	ATTORNEY APPEARANCE for defendant JANET RENO by Gaye L. Hume (kmk) [Entry date 09/14/94]
Sept. 13	19	ANSWER TO COMPLAINT [2-1] by defendant JANET RENO. (kmk) [Entry date 09/14/94]
Sept. 26	20	MOTION filed by plaintiff(s) BOSSIER PARISH for relieve complainants of duty to answer certain interrogatories and requests for production of documents, Affidavit (1), Exhibit (1) (lpp) [Entry date 09/29/94]
Sept. 26	22	RESPONSE by intervenors in opposition to motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH, Attachment: (1). (lpp) [Entry date 09/29/94]
Oct. 3	23	REQUEST by intervenor GEORGE PRICE for admissions for plaintiff(s) BOSSIER PARISH, Attachments (21) (lpp) [Entry date 10/05/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Oct. 6	24	ORDER by Judge Charles R. Richey : denying motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH; granting the defendant-intervenors' objections; denying and overruling the plaintiff's objections (N) (jeb)
Oct. 17	25	NOTICE OF FILING by defendant JANET RENO, of an agreed order extending discovery period and certain related filing deadlines, Exhibit (1) (lpp) [Entry date 10/18/94]
Oct. 25	26	STIPULATED ORDER by Judge Charles R. Richey : discovery due 10/28/94; plaintiffs' briefs and dispositive motions due 11/9/94; extending time to file proposed findings of fact and conclusions of law due 11/7/94; extending time to 11/23/94 for defendant and defendant-intervenors' briefs and dispositive motions to be filed. ; (N) (jeb)

DATE	DOCKET NUMBER	PROCEEDINGS
Nov. 9	27	ORDER by Judge Charles R. Richey : All prior ORders shall remain in full force; Counsel for parties shall Meet Confer hearing set for 4:00 11/18/94, Cousel [sic] for parties shall file statements of material facts due by 4:00 11/21/94, and cross motions for summary judgment due 4:00 11/21/94; response to motions for summary judgment due 4:00 11/30/94, reply motions for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94]
Nov. 9	28	ORDER by Judge Charles R. Richey : Meet Confer hearing set for 4:00 11/18/94, statement of material facts which are not in dispute due 4:00 11/21/94;, cross motions for summary judgment due 4:00 11/21/94; response to motion for summary judgment due 4:00 11/30/94 reply motion for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94]
Nov. 10	29	PRETRIAL STATEMENTS by plaintiff BOSSIER PARISH (lpp) [Entry date 11/14/94]
Nov. 16	30	MOTION filed by plaintiff BOSSIER PARISH to extend time to comply with the Court Order 11/9/94, Attachment (3) (lpp) [Entry date 11/17/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Nov. 17	31	RESPONSE by defendant JANET RENO to motion to extend time to comply with the Court Order 11/9/94 [30-1] by BOSSIER PARISH (ted) [Entry date 11/18/94]
Nov. 17	32	REQUEST by defendant JANET RENO for clarification (ted) [Entry date 11/18/94]
Nov. 17	33	MEET AND CONFER STATEMENT/ REPORT PURSUANT TO L.R. 206(d) filed by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE. (ted) [Entry date 11/18/94]
Nov. 18	—	Tele-conference before Judge Charles R. Richey reporter: Frank Rangus (jeb)
Nov. 21	34	ORDER by Judge Charles R. Richey : all prior Orders shall remain in full force and effect, except as modified herein (N) (dbw)
Nov. 23	35	PRETRIAL STATEMENTS by intervenors GEORGE PRICE, attachments (2) (lpp) [Entry date 11/25/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Nov. 25	36	PRETRIAL STATEMENTS by defendant JANET RENO, attachments (3) (lpp) [Entry date 11/28/94]
Nov. 30	37	JOINT MEMORANDUM by intervenor-defendants of findings of fact and conclusions of law (lpp) [Entry date 12/01/94]
Dec. 19	38	NOTICE OF FILING by defendant JANET RENO: Final Version of Direct Testimony (14), bulky pleading (lpp) [Entry date 12/21/94]
Dec. 20	39	NOTICE OF FILING by intervenor GEORGE PRICE: Addendum to DIrecto [sic] Testimony of William Cooper and Jerry Hawkins (2) (lpp) [Entry date 12/22/94]
Dec. 20	40	NOTICE OF FILING by defendant JANET RENO; of disputed portions of direct testimony.; attachments (blj) [Entry date 12/22/94]
Dec. 20	41	NOTICE OF FILING by defendant JANET RENO of original final version of direct testimony of Gary Dillard Joiner; attachments (1) (blj) [Entry date 12/22/94]

DATE	DOCKET NUMBER	PROCEEDINGS
Dec. 21	42	NOTICE OF FILING - by plaintiff BOSSIER PARISH: Rebuttal Testimony (2) (lpp) [Entry date 12/23/94]
Dec. 22	43	NOTICE OF FILING by defendant JANET RENO, intervenor GEORGE PRICE: Filing of Disputed portions of Rebuttal Testimony (2), Attachment (2) (lpp) [Entry date 12/23/94]
1995		
Jan. 3	44	NOTICE OF FILING by defendant JANET RENO/United States: Corrected Pleading - Notice By U.S. and Defendant-Intervenors of filing of disputed portions of rebuttal testimony, Exhibit (1), Attachment (2) (lpp) [Entry date 01/06/95] [Edit date 03/30/95]
Jan. 10	45	ORDER by Judge Charles R. Richey : directing counsel to advise Judge Richey, in writing, by 1/17/95 4:00 p.m. as to whether they consent to having undersigned Judge hear testimony and evidence, and transmit ensuing record to Circuit Judge Silberman and District Judge Kessler for review; upon review, the three Judges shall have oral argument to consider the record and briefs of Counsel; telephonic status hearing set for 2:00 1/18/95 (N) (dbw)

DATE	DOCKET NUMBER	PROCEEDINGS
Jan. 18	—	STATUS HEARING (TELECONFERENCE) before Judge Charles R. Richey : bench trial set for 10:00 4/10/95 Reporter: Susan Tyner (dbw)
Jan. 18	46	ORDER by Judge Charles R. Richey : directing Counsel to meet and confer by 2/20/95 4:00 p.m. and file stipulations of fact and law and evidentiary objections by 3/20/95 4:00 p.m.; exhibit list and witness list due 3/20/95 4:00 p.m.; trial set for 10:00 4/10/95 and continuing the next day thereafter; all prior Orders shall remain in full force and effect (N) (dbw) [Entry date 01/19/95]
Feb. 3	47	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to modify scheduling order; Attachment (ted) [Entry date 02/06/95]
Feb. 3	48	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to expedite ruling on defendants' motion to exclude testimony; Attachment (ted) [Entry date 02/06/95]

DATE	DOCKET NUMBER	PROCEEDINGS
Feb. 3	49	MOTION filed by defendant JANET RENO to exclude testimony; Attachment (ted) [Entry date 02/06/95]
Feb. 14	50	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to Defendants and Intervenors' objections to testimony of complainant's witnesses, attachment (1) (lpp) [Entry date 02/15/95]
Feb. 17	51	NOTICE OF FILING by intervenor GEORGE PRICE: Direct Tesdtimony [sic] of David Creed, letter (1) fiat 02/22/95 (lpp) [Entry date 02/23/95]
Feb. 24	52	REPLY by defendant JANET RENO, intervenor GEORGE PRICE to response to response [50-1] by BOSSIER PARISH, Exhibits (4). (lpp) [Entry date 02/27/95]
March 17	53	EXHIBIT list by plaintiff Basier [sic] Parish School Board (lpp) [Entry date 03/20/95]
March 17	54	WITNESS LIST by plaintiff BOSSIER PARISH (lpp) [Entry date 03/20/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 17	63	DEPOSITION of Bob G. Burford taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]
March 20	55	EXHIBIT list by defendant-intervenors (lpp) [Entry date 03/21/95]
March 20	56	STIPULATION filed by Bossier Parish School Board, Plaintiff; Janet Reno, Defendant; George Price, Defendant-Intervenors et al. regarding Fact and Law. (N) (lpp) [Entry date 03/21/95] [Edit date 03/21/95]
March 20	57	NOTICE OF FILING by defendant JANET RENO: Final Versoion [sic] of Direct Testimony (lpp) [Entry date 03/21/95]
March 20	58	STIPULATION filed by Bossier Parish School Board, Plaintiff and Janet Reno, Defendant and George Price et al. Defendant-Intervenors, regarding: Exhibits. (N) (lpp) [Entry date 03/21/95]
March 20	59	MOTION filed by defendant JANET RENO to exclude exhibit of plaintiff (lpp) [Entry date 03/21/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 20	60	EXHIBIT list by Janet Reno, Defendant (lpp) [Entry date 03/21/95]
March 21	61	DEPOSITION of Paul Caplis taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (lpp) [Entry date 03/23/95]
March 21	62	DEPOSITION of James M. Bullers taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 3/21/95. (lpp) [Entry date 03/23/95]
March 21	64	DEPOSITION of William Johnston taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]
March 21	65	JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs designation of deposition testimony of James Bullers [62-1] by GEORGE PRICE, JANET RENO, BOSSIER PARISH (dcn) [Entry date 03/23/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 21	66	WITNESS LIST by defendant JANET RENO, intervenor GEORGE PRICE (dcn) [Entry date 03/23/95]
March 21	67	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of James Ramsey taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (dcn) [Entry date 03/23/95]
March 21	68	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of JAMES ELKINS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (dcn) [Entry date 03/23/95]
March 22	69	JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs cross-designations of deposition testimony of school board members (dcn) [Entry date 03/23/95]
March 22	70	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of MARGUERITE HUDSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 09/29/94. (dcn) [Entry date 03/23/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 22	71	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of JUANITA JACKSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/94. (dcn) [Entry date 03/23/95]
March 22	72	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of David Harvey taken by defendant JANET RENO, intervenor GEORGE PRICE on 9/30/94. (dcn) [Entry date 03/23/95]
March 22	73	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of BARBARA BAYLOCK [sic] taken by defendant JANET RENO, intervenor GEORGE PRICE on BARBARA BLAYLOCK [sic]. (dcn) [Entry date 03/23/95]
March 22	74	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of RUTH SULLIVAN taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/95. (dcn) [Entry date 03/23/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 22	75	JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of BARBARA GRAY taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on BARBARA GRAY [sic]. (dcn) [Entry date 03/23/95]
March 22	76	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of SUSAN BARERRA taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95. (dcn) [Entry date 03/23/95]
March 22	77	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of BOYCE HENSLEY taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95 [sic]. (dcn) [Entry date 03/23/95]
March 22	78	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of MICHELLE RODGERS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95 [sic]. (dcn) [Entry date 03/23/95]

DATE	DOCKET NUMBER	PROCEEDINGS
March 22	79	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of HENRY BURNS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/6/94. (dcn) [Entry date 03/23/95]
March 29	80	MOTION filed by defendant JANET RENO the United States seeks permission to subpoena witnesses, attachment (a) (lpp) [Entry date 03/31/95]
April 3	81	ORDER by Judge Charles R. Richey : granting motion of the United States seeking permission to subpoena witnesses [80-1] by JANET RENO (N) (dbw)
April 3	82	MOTION filed by plaintiff BOSSIER PARISH to add additional counsel, Affidavit (1) (lpp) [Entry date 04/04/95]
April 4	85	MOTION filed by intervenor GEORGE PRICE seeking permission to subpoena witnesses (lpp) [Entry date 04/07/95]
April 6	83	ENTERED IN ERROR (lpp)

DATE	DOCKET NUMBER	PROCEEDINGS
April 6	—	Tele-conference before Judge Charles R. Richey: bench trial remains set for 4/10/95 10:00 a.m. Reporter: Susan Tyner (dbw) [Entry date 04/07/95]
April 6	84	ORDER by Judge Charles R. Richey : authorizing Frank M. Ferrell to assist as additional attorney of record for complainant in prosecution of its cause in this court [82-1] (N) (dbw) [Entry date 04/07/95]
April 7	86	ORDER by Judge Charles R. Richey : granting motion seeking permission to subpoena witnesses [85-1] by GEORGE PRICE (N) (dbw)
April 7	88	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Ruth Sullivan, attachment. (jeb) [Entry date 04/11/95]
April 7	89	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Marquerite Hudson; attachment. (jeb) [Entry date 04/11/95]

DATE	DOCKET NUMBER	PROCEEDINGS
April 7	90	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Michelle Rodgers; attachment. (jeb) [Entry date 04/11/95]
April 7	91	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Barbara Blaylock; attachment. (jeb) [Entry date 04/11/95]
April 7	92	EXHIBIT list of defendant United States. (jeb) [Entry date 04/11/95]
April 7	93	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of David Harvey; attachment. (jeb) [Entry date 04/11/95]
April 7	94	NOTICE OF FILING of supplemented direct testimony of S.P. Davis; attachment. (jeb) [Entry date 04/11/95]
April 7	95	NOTICE OF FILING of corrected direct testimony of Dr. George Castille; attachment. (jeb) [Entry date 04/11/95]
April 7	96	NOTICE OF FILING (jeb) [Entry date 04/11/95]

DATE	DOCKET NUMBER	PROCEEDINGS
April 7	97	AMENDED JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor-defendant GEORGE PRICE to plaintiff's cross-designations of deposition testimony of school board members. (jeb) [Entry date 04/11/95]
April 7	98	FINAL STIPULATIONS of fact and law. (jeb) [Entry date 04/11/95] [Edit date 04/11/95]
April 7	99	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to objection [97-1] by GEORGE PRICE, JANET RENO (lpp) [Entry date 04/12/95]
April 7	100	RESPONSE by plaintiff BOSSIER PARISH to motion to excude [sic] exhibit of plaintiff [59-1] by JANET RENO (lpp) [Entry date 04/12/95]
April 10	—	NON-JURY TRIAL before Judge Charles R. Richey begun and continued to 9:30 4/11/95. Reporter: Susan Tyner (dbw)

DATE	DOCKET NUMBER	PROCEEDINGS
April 10	87	ORDER by Judge Charles R. Richey : directing counsel not to use word "expert", but instead shall refer to such persons as "opinion" witnesses during trial; Attachment (1) (N) (dbw) [Edit date 04/11/95]
April 11	—	NON-JURY TRIAL before Judge Charles R. Richey resumed and concluded; case [0-0] taken under advisement; proposed findings of fact due 5/3/95 4:00 p.m. Reporter: Susan Tyner (dbw) [Edit date 04/11/95]
April 12	101	ORDER by Judge Charles R. Richey : proposed findings of fact due 4/28/95; marked-up proposed findings of fact due by 4:00 5/5/95; advising parties that when the Court issues its findings of fact, a briefing and oral argument schedule shall be issued. (N) (dbw)
April 19	102	TRANSCRIPTS (2) filed for dates of 4/10/95; 4/11/95. Volumes I and II. Reporter: Susan Page Tyner (bm) [Entry date 04/21/95]

DATE	DOCKET NUMBER	PROCEEDINGS
May 5	103	NOTICE OF FILING by defendant JANET RENO, intervenor-defendant GEORGE PRICE of marked-up proposed findings of fact and conclusions of law of plaintiff; attachment. (jeb) [Entry date 05/08/95]
May 5	104	NOTICE OF FILING by plaintiff BOSSIER PARISH of marked-up proposed findings of fact and conclusions of law of defendant and defendant-intervenor; attachment. (jeb) [Entry date 05/08/95]
May 15	105	ORDER by Judge Charles R. Richey : deferring ruling on the facts until after the Opinions are handed down in related cases before the U.S. Supreme Court; directing that on the tenth business day following the Supreme Court's issuance of its opinion in the related cases, counsel for all parties shall file simultaneous briefs on the law as a supplement to the factual supplements already filed; oral argument as to the facts of [sic] the law set for 9:30 7/19/95; (N) (jeb)

DATE	DOCKET NUMBER	PROCEEDINGS
May 25	106	ORDER by Judge Charles R. Richey : setting oral argument as to the facts and the law for 9:30 a.m. 7/27/95 and continuing thereafter until 12:00 p.m. of the same day with the understanding that counsel for all parties shall meet and confer prior to argument to divide up the time among themselves in such manner as they deem fit (N) (dbw)
July 11	107	ORDER by Judge Charles R. Richey : reminding counsel, pursuant to Court's Order of 5/15/95, they [sic] they are file [sic] file final briefs with respect to futher issues herein and the two Supreme Court Opinions entitled US v. Hays and Miller v. Johnson by 4:00 on 7/14/95; directing Clerk of Court to telephone contents of this Order to Counsel for all parties (N) (dbw)
July 12	108	SUPPLEMENTAL BRIEF by plaintiff BOSSIER PARISH; attachment (post-trial brief); exhibits (4) (No signature on pleading). (jmf) [Entry date 07/13/95] [Edit date 07/13/95]
July 14	109	POST TRIAL BRIEF by defendant JANET RENO (BULKY PLEADING) (jmf) [Entry date 07/18/95]

DATE	DOCKET NUMBER	PROCEEDINGS
July 14	110	POST TRIAL BRIEF by intervenor-defendant GEORGE PRICE (jmf) [Entry date 07/18/95]
July 24	111	NOTICE OF FILING by defendant JANET RENO of unreported decision and errata to post-trial brief; Attachments (2) (ted) [Entry date 07/25/95]
July 27	—	ORAL ARGUMENT held before Circuit Judge Laurence Silberman, Judge Charles R. Richey, and Judge Gladys Kessler Reporter: Susan Tyner (dbw)
Aug. 23	112	TRANSCRIPT filed for Oral Argument held on date(s) of July 27, 1995. Reporter: Susan Page Tyner (jmf)
Nov. 2	113	MEMORANDUM OPINION FOR THE COURT by Judge Laurence H. Silberman and Judge Charles R. Richey granting plaintiff Bossier Parish School Board the requested declaratory judgment (N); APPENDIX (2) (dbw) [Entry date 11/03/95]
Nov. 2	114	MEMORANDUM OPINION by Judge Gladys Kessler concurring in part and dissenting in part (N) (dbw) [Entry date 11/03/95]

DATE	DOCKET NUMBER	PROCEEDINGS
Nov. 2	115	ORDER by Judge Laurence H. Silberman and Judge Charles R. Richey : plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect (N) (dbw) [Entry date 11/03/95]
Dec. 27	116	(ENTERED IN ERROR) NOTICE OF APPEAL by defendant JANET RENO from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. No fee paid U.S. Gov't; Copies mailed to James J. Thornton, Nancy Sardeson, Gaye L. Hume, Patricia A. Brannan and Samuel L. Walters. (jmf) [Entry date 12/28/95] [Edit date 01/30/96]
Dec. 27	119	NOTICE OF APPEAL by defendant JANET RENO to the U.S. Supreme Court from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. (jmf) [Entry date 01/30/96]

DATE	DOCKET NUMBER	PROCEEDINGS
Dec. 28	—	TRANSMITTED PRELIMINARY RECORD on appeal [116-1] by JANET RENO to U.S. Court of Appeals (jmf)
1996		
Jan. 2	117	NOTICE OF FILING by defendant JANET RENO of clarification on service of previously filed notice of appeal. (jmf) [Entry date 01/03/96]
Jan. 2	118	NOTICE OF APPEAL by intervenor-defendants' to the U.S. Supreme Court from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], entered on: $5.00 filing fee paid. November 03, 1995. (jmf) [Entry date 01/03/96]
March 1	120	LETTER received from Supreme Court of the U.S. that the application for extension of time within which to docket an appeal has been granted to and including March 11, 1996 (jmf) [Entry date 03/06/96]

DATE	DOCKET NUMBER	PROCEEDINGS
March 4	121	LETTER from the Supreme Court of the U.S. that the application for an extension within which to docket an appeal has been granted to and including March 18, 1996. (jmf) [Entry date 03/06/96]
Aug. 12	—	CERTIFIED and transmitted record on to U.S. Supreme Court (jmf)
1997		
June 12	122	CERTIFIED COPY of judgment filed in the Supreme Court dated 5/12/97, on appeal [118-1], appeal [119-1], remanding for further proceedings. OPINION Supreme Court #95-1455 & 95-1508 (cjp) [Entry date 06/19/97]
June 12	123	CERTIFIED COPY of judgment filed in the Supreme Court dated 5/12/97, on appeal [118-1], appeal [119-1], awarding costs SUPREME COURT # 95-1455 & 95-1508 (cjp) [Entry date 06/19/97]
June 12	—	Case Reopened (ab) [Entry date 07/07/97]
June 19	—	CASE REASSIGNED to Judge James Robertson (jmf) [Entry date 06/24/97]

DATE	DOCKET NUMBER	PROCEEDINGS
July 10	—	Record returned from US Supreme Court (jmf) [Entry date 08/13/97]
Aug. 13	124	ORDER by Judge James Robertson : directing the parties to file motions or short memoranda setting forth their views of what further proceedings are required due by 9/5/97 (N) (jeb) [Entry date 08/14/97]
Sept. 4	127	NOTICE OF FILING by plaintiff BOSSIER PARISH brief on procedures in trial court after remand (jmf) [Entry date 09/10/97]
Sept. 5	125	RESPONSE by defendant JANET RENO to Court's order dated August 13, 1997 [124-2] (jmf) [Entry date 09/08/97]
Sept. 5	126	RESPONSE by intervenor-defendants' to Court's order dated August 13, 1997 [124-2] (jmf) [Entry date 09/08/97]
Sept. 9	128	ORDER by Judge James Robertson: directing that the plaintiff may have to 10/24/97 to file a supplemental brief and defendant and defendant-intervenor to file responsive briefs due by 12/8/97 (N) (jeb) [Entry date 09/10/97]

DATE	DOCKET NUMBER	PROCEEDINGS
Sept. 19	129	ORDER by Judge James Robertson : directing that any party wishing to present additional evidence give notice by memorandum due 9/30/97; response to brief due 10/15/97; (N) (jeb)
Sept. 29	130	MEMORANDUM by plaintiff BOSSIER PARISH in response to the order of the District Court (jmf)
Oct. 23	131	NOTICE OF FILING by plaintiff BOSSIER PARISH of brief in behalf of plaintiff (jmf) [Entry date 10/24/97]
Dec. 8	132	STATEMENT filed by intervenor-defendant, regarding: brief on remand. (jmf) [Entry date 12/09/97]
Dec. 8	133	STATEMENT filed by federal defendant JANET RENO, regarding: brief on remand. (jmf) [Entry date 12/09/97]
Dec. 23	134	MOTION filed by plaintiff BOSSIER PARISH for authority to file reply brief (jmf) [Entry date 12/29/97]

DATE	DOCKET NUMBER	PROCEEDINGS
1998		
Jan. 6	135	ORDER by Judge James Robertson : granting motion for authority to file reply brief [134-1] by BOSSIER PARISH (N) (jeb) [Entry date 01/07/98]
Jan. 30	136	REPLY BRIEF by plaintiff BOSSIER PARISH (jmf) [Entry date 02/03/98]
March 20	137	ATTORNEY APPEARANCE for intervenor-defendants by Edward Still (jmf) [Entry date 03/24/98]
May 1	138	MEMORANDUM OPINION by Judge James Robertson (N) (jeb) [Entry date 05/04/98]
May 1	139	ORDER by Judge James Robertson: directing that the plaintiff Bossier Parish School [sic] is given pre-clearance for its election plan adopted on 10/1/92, and that it shall have a declaratory judgment to that effect. (N) (jeb) [Entry date 05/04/98]
July 6	140	NOTICE OF APPEAL by federal defendant JANET RENO to the U.S. Supreme Court from order [139-1], entered on: 05/04/98; fee not paid, appeal by govt. Copies mailed to counsel. (lkn) [Entry date 07/08/98] [Edit date 07/09/98]

DATE	DOCKET NUMBER	PROCEEDINGS
July 6	141	NOTICE OF APPEAL by intervenor-defendant to the U.S. Supreme Court from order [139-1] entered on: 05/04/98; fee not paid. Copies mailed to counsel. (lkn) [Entry date 07/08/98] [Edit date 07/09/98]
Sept. 26	—	US Supreme # 98-406 assigned for appeal [141-1] by intervenor-defend (jmf)

[Department of Justice letterhead omitted]

May 31, 1990

Ms. Cheryl G. Martin
Secretary-Treasurer
Bossier Parish Police Jury
P. O. Box 68
Benton, Louisiana 71006

Dear Ms. Martin:

This refers to Ordinance No. 3101 (1989) which provides for a realignment of voting precincts for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 2, 1990.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By: /s/ Lora L. Tredway

for Barry H. Weinberg
Acting Chief, Voting Section

[Department of Justice letterhead omitted]

July 29, 1991

Mr. James W. Ramsey
Bossier Parish Police Jury
P. O. Box 68
Benton, Louisiana 71006

Dear Mr. Ramsey:

This refers to the 1991 redistricting plan for the police jury, the precinct realignment, twelve polling place changes, and the creation of seventeen new voting precincts and the polling places therefor for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 28, 1991; supplemental information was received on July 19, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By: /s/ Sandra Coleman

for Gerald W. Jones
Chief, Voting Section

Extract of Minutes of Bossier Parish Police Jury meeting on January 11, 1994 (Plaintiff's Exhibit 5)

* * *

Mr. Avery stated that he has spoken to Mr. Gary Joiner regarding the current issue of the Bossier Parish School Board's struggle for approval of its re-apportionment plan by the Justice Department. The school board has submitted the same plan which the Justice Department approved for the police jury two years ago, but has been denied approval. Motion was made by Mr. Meachum, seconded by Mr. Glorioso, that the Bossier Parish Police Jury clarify that it stands by its original reapportionment plan. Mr. Darby stated that he is concerned that if the school board and the police jury have different district lines, it will be confusing to Bossier Parish citizens. However, Mr. Darby indicated that he supports the police jury's original plan. Mr. Bullers, District Attorney, stated that he does not understand the position of the Justice Department and that he feels the school board will ultimately end up in court with a judge making the final decision. Votes were cast on Mr. Meachum's motion to make public the police jury's intention to maintain its current district lines. Motion carried unanimously.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION NUMBER 94-848-A2

REVEREND JESSE CARROLL KNIGHT, SR., ET AL., PLAINTIFF

v.

W. FOX MCKEITHEN, ET AL., DEFENDANTS

HONORABLE JOHN V. PARKER
AUGUST 23, 1994

COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

APPEARANCES

FOR THE PLAINTIFF:

MS. PATRICIA A. BRANNAN
ATTORNEY AT LAW

MR. JOHN W. BORKOWSKI
ATTORNEY AT LAW

MR. SAMUEL L. WALTERS
ATTORNEY AT LAW

FOR THE EAST CARROLL PARISH SCHOOL BOARD:

MR. MICHAEL LANCASTER
ATTORNEY AT LAW

MR. JAMES D. CALDWELL
ATTORNEY AT LAW

FOR THE ST. MARY PARISH SCHOOL BOARD:

MR. JAMES McCLELLAND
ATTORNEY AT LAW

FOR THE BOSSIER PARISH SCHOOL BOARD:

MR. JAMES THORNTON
ATTORNEY AT LAW

MR. FRANK M. FERRELL
ATTORNEY AT LAW

FOR THE SECRETARY OF STATE:

MS. SHERI MORRIS
ATTORNEY AT LAW

FOR RICHARD IEYOUB:

MS. ANGIE LaPLACE
ATTORNEY AT LAW

FOR THE UNITED STATES:

MS. NANCY SARDESON
ATTORNEY AT LAW

REPORTED BY: KAY RABORN, C.C.R
OFFICIAL COURT REPORTER

[2] THE COURT: ALL RIGHT, THIS WILL BE THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, AT LEAST TO THE EXTENT THAT WE CAN PUT SOMETHING TOGETHER, SUBJECT, OF

COURSE, TO FURTHER ADDITIONAL FINDINGS AND CONCLUSIONS SHOULD THAT BECOME APPROPRIATE.

THIS MATTER IS BEFORE THE COURT ON A MOTION FOR PRELIMINARY INJUNCTION FILED ON BEHALF OF THE PLAINTIFFS, WHO ARE ALLEGED TO BE BLACK CITIZENS AND REGISTERED VOTERS OF EAST CARROLL AND BOSSIER PARISHES, INSOFAR AS IS CURRENTLY MATERIAL. AND THERE IS, OF COURSE, NO EVIDENCE TO THE CONTRARY.

THEY ALLEGE THAT THE SCHOOL BOARDS ARE THREATENING TO DEPRIVE THE PLAINTIFFS OF THEIR RIGHT TO PARTICIPATE EQUALLY IN PUBLIC SCHOOL BOARD ELECTIONS CONDUCTED UNDER LAWFUL NON-DISCRIMINATORY REDISTRICTING PLANS PURSUANT TO THE SCHEDULE PRESCRIBED BY STATE LAW FOR THE CONDUCT OF SUCH ELECTIONS IN VIOLATION OF THE 14TH AND 15TH AMENDMENTS, SECTIONS 2 AND 5 OF THE VOTING RIGHTS ACT OF 1965 AND 42 U.S.C. SECTION 1983.

IT IS UNDISPUTED THAT BOTH EAST CARROLL AND BOSSIER PARISHES HAVE NOT ADOPTED AND PLACED INTO EFFECT REDISTRICTING PLANS FOR THE SCHOOL BOARD. I SAID EAST CARROLL AND BOSSIER PARISHES. I MEAN, EAST CARROLL AND BOSSIER PARISHES SCHOOL BOARDS HAVE NOT ADOPTED AND SET INTO EFFECT REDISTRICTING PLANS FOR [3] THOSE RESPECTIVE BOARDS, AS THEY ARE REQUIRED TO DO, BOTH BY THE STATE LAW AND, OF COURSE, BY FEDERAL LAW.

ACCORDINGLY, THE THRUST OF THIS LITIGATION HAS TO BE TO TAKE APPROPRIATE STEPS SINCE IT IS UNDISPUTED THAT THERE IS A VIOLATION OF LAW TO TAKE APPROPRIATE STEPS TO REMEDY THE VIOLATION. I REPEAT, FOR PURPOSES OF CLARITY, THAT THE ONLY VIOLATION IS THE ONE-MAN-ONE-VOTE PRINCIPLE.

THERE ARE ALLEGED VIOLATIONS OF SECTION 2 OF THE VOTING RIGHTS ACT, BUT THAT IS NOT RELEVANT TO ANY ISSUE PRESENTLY BEFORE THE COURT. THE ONLY RELEVANCE TO SECTION 2 IS THAT IN ORDERING A REAPPORTIONMENT REDISTRICTING, THE COURT, THE BOARD, OR ANYBODY ELSE ATTEMPTING TO DRAW A PLAN, MUST COMPLY WITH ALL MEASURES OF LAW, INCLUDING SECTION 2 OF THE VOTING RIGHTS ACT.

IN ADDITION, IF THIS COURT STARTS DRAWING ANY PLANS, THE COURT SHOULD COMPLY OR THE PLAN ADOPTED BY THE COURT, ORDERED BY THE COURT, SHOULD COMPLY, IN EVERY POSSIBLE RESPECT, WITH ALL PORTIONS OF STATE LAW, WHICH ARE NOT CONTRADICTORY TO FEDERAL LAW. IT IS, I THINK, PRETTY CLEARLY ESTABLISHED THAT DISTRICT COURTS DO HAVE POWER TO FASHION INTERIM REMEDIES AND TO ORDER INTERIM PLANS INTO EFFECT WHERE NECESSARY, WHETHER [4] THERE IS ANY VIOLATION OF FEDERAL LAW, INCLUDING A VIOLATION OF THE ONE-MAN-ONE-VOTE PRINCIPLE.

ELECTIONS, OF COURSE, ARE PRESENTLY SCHEDULED ACCORDING TO THE STATE'S REGULAR TIMETABLE, THROUGHOUT THE STATE FOR SCHOOL BOARDS, AND WE HAVE STIPULATED

THAT IF THIS COURT ORDERS INTERIM PLANS INTO EFFECT, THAT QUALIFICATION TO RUN FOR OFFICE UNDER THAT PLAN WOULD BE TOMORROW, AUGUST 24TH, AND THE NEXT DAY, AUGUST 25TH, AS I RECALL.

WAS IT TWO, OR THREE DAYS, MS. MORRIS?

MS. MORRIS: THREE.

THE COURT: CONSEQUENTLY, THERE IS A GREAT NEED FOR HASTE.

NOW, IN COMPLIANCE WITH SECTION 2 OF THE VOTING RIGHTS ACT, THAT PROVISION READS, IN PART, A VIOLATION OF SUBSECTION A IS ESTABLISHED, IF BASED ON THE TOTALITY OF CIRCUMSTANCES, AS [SIC] IS SHOWN, THAT THE POLITICAL PROCESSES LEADING TO NOMINATION OR ELECTION IN THE STATE OR POLITICAL SUBDIVISION ARE NOT EQUALLY OPEN TO PARTICIPATION BY MEMBERS OF A CLASS OF CITIZENS PROTECTED BY SUBSECTION A OF THIS SECTION, IN THAT ITS MEMBERS HAVE LESS OPPORTUNITY THAN OTHER MEMBERS OF THE ELECTORATE TO PARTICIPATE IN THE POLITICAL PROCESS AND TO ELECT REPRESENTATIVES OF THEIR CHOICE. SO, THAT IS THE GOAL THAT WE MUST HAVE IN MIND WHEN WE SEEK TO [5] REAPPORTION THE SCHOOL BOARD.

THE PLAINTIFFS HAVE PRESENTED A PLAN, WHICH THEY SAY WILL FULLY COMPLY, NOT ONLY WITH ONE-MAN-ONE-VOTE, BUT WILL FULLY MEET EVERY EXPECTATION AND REQUIREMENT OF SECTION 2 OF THE VOTING RIGHTS ACT. AND I AGAIN EMPHASIZE THAT WE

DO NOT HERE HAVE ANY PROVEN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT. WE HAVE A CLAIM BY THE PLAINTIFFS THAT DISTRICT 3 OF THE PLAN PRESENTED BY THE DEFENDANTS DOES NOT, IN MY WORDS, PRESENT AN EQUAL PLAYING FIELD SO THAT MEMBERS OF THE MINORITY DO HAVE AN OPPORTUNITY, WITH OTHER MEMBERS OF THE ELECTORATE, TO PARTICIPATE IN THE POLITICAL PROCESS AND TO ELECT REPRESENTATIVES OF THEIR CHOICE.

COUNSEL FOR THE PLAINTIFFS STARTED HER ORAL ARGUMENT A FEW MOMENTS AGO BY EMPHASIZING HOW CLOSELY THESE PLANS RESEMBLE EACH OTHER. AND THAT SEEMS, TO THE COURT, TO CERTAINLY BE CORRECT. IF MY ARITHMETIC IS STRAIGHT, THAT IS CORRECT. THE PLAINTIFFS WOULD ADD FIFTY-SIX BLACK PEOPLE OF VOTING AGE TO THAT DISTRICT AND WOULD ZONE OUT NINETY-TWO WHITE PEOPLE OF VOTING AGE IN THAT DISTRICT, WHICH WOULD CAUSE THE BLACK VOTING AGE POPULATION TO GO UP FROM 436 TO 492 AND THE WHITE VOTING AGE POPULATION TO GO DOWN FROM 239 TO 147, AND WOULD MAKE A TREMENDOUS DIFFERENCE IN THE PERCENTAGE.

[6] THE DISTRICT, AT PRESENT, AS DRAWN BY THE DEFENDANTS AND PRESENTED TO THE DEPARTMENT OF JUSTICE, HAS A VOTING AGE BLACK POPULATION OF 64.6 PERCENT, AND UNDER THE PLAINTIFFS' SUGGESTION, THESE SMALL NUMBERS WOULD PRODUCE AN INCREASE IN BLACK VOTING AGE POPULATION OF SEVENTY-SEVEN PERCENT, SOME THIRTEEN

PERCENT INCREASE, WHICH ILLUSTRATES THAT WHEN YOU'RE DEALING WITH SMALL NUMBERS, LARGE PERCENTAGES CAN RESULT.

THERE IS VERY LITTLE DIFFERENCE BETWEEN THESE PLANS. THE TESTIMONY OF DR. WEBER HAS CONVINCED ME THAT THE DISTRICT, AS DRAWN, PRESENTS A LEVEL PLAYING FIELD FOR VOTERS OF BOTH RACES.

SECTION 2 SPECIFICALLY PROVIDES NOTHING IN THIS SECTION ESTABLISHING A RIGHT TO HAVE MEMBERS OF A PROTECTED CLASS ELECTED IN NUMBERS EQUAL TO THEIR PROPORTION IN THE POPULATION.

I THINK THE PLAN DRAWN BY THE PLAINTIFFS IS WHAT THEY CALL, IN THIS TYPE OF LITIGATION, PACKING. THE EVIDENCE DOES NOT CONVINCE THE COURT THAT THERE IS ANY NECESSITY FOR PACKING IN THIS DISTRICT. THE ANALYSIS OF DR. WEBER OF THESE POLICE JURY ELECTIONS IN THIS SAME DISTRICT—WELL, THERE ARE TWO OF THEM; ONE IN THE OTHER DISTRICT, 3, AND ONE IN DISTRICT 5, WHERE BLACK POLICE JURY CANDIDATES WERE NOT ABLE TO WIN, [7] ILLUSTRATES TO ME THAT HAD THE BLACK POPULATION WANTED TO VOTE FOR THE BLACK CANDIDATE WHO LOST, THE BLACK CANDIDATE WOULD HAVE WON.

IN OTHER WORDS, THE OPPORTUNITY, IN THE WORDS OF SECTION 2, THE OPPORTUNITY IS THERE. BY REASON OF THE SIXTY-FIVE PERCENT BLACK VOTING AGE POPULATION, THIS COURT HAS NO REASON TO BELIEVE THAT THIS DISTRICT IS NOT EQUALLY OPEN TO PARTICIPA-

TION BY MEMBERS OF A CLASS OF CITIZENS PROTECTED BY SUBSECTION A.

IN OTHER WORDS, IT DOESN'T SEEM TO ME THAT THIS GEOGRAPHIC DRAWING IS LIKELY TO PRODUCE A VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT, DESPITE WHAT THE DEPARTMENT OF JUSTICE MAY HAVE SAID. THE DEPARTMENT OF JUSTICE HAS TO DO ITS THING AND THE COURT WILL HAVE TO DO ITS THING, BASED UPON THE EVIDENCE PRESENTED IN COURT.

SINCE I'M NOT CONVINCED THAT THERE IS A NEED FOR PACKING, AS THE PLAINTIFFS PROPOSE, I'M NOT WILLING TO ORDER THE PLAN PRESENTED BY THE PLAINTIFFS INTO EFFECT AS AN INTERIM PLAN FOR USE IN THIS SCHOOL BOARD ELECTION.

IT IS HIGHLY DESIRABLE, HOWEVER, THAT THERE BE ELECTIONS—AN ELECTION FOR SCHOOL BOARD IN EAST CARROLL PARISH. TO ALLOW THE ENTIRE PARISH TO BE DEPRIVED OF THE RIGHT TO VOTE FOR MEMBERS OF THE SCHOOL [8] BOARD, BECAUSE OF THIS SMALL DISAGREEMENT—WELL, IT'S NOT A SMALL DISAGREEMENT. IT'S A VERY SERIOUS DISAGREEMENT BETWEEN THE PLAINTIFFS AND THE SCHOOL BOARD. BUT A DISAGREEMENT OVER THIS SMALL NUMBER OF PEOPLE, TO DEPRIVE ALL 9,709 PEOPLE OF THE PARISH THE OPPORTUNITY TO VOTE SEEMS, TO ME, TO BE RIDICULOUS.

UNDER THE CIRCUMSTANCES, THE COURT EXERCISES ITS DISCRETION IN ORDERING PLAN

NUMBER 6, OR WHATEVER YOU CALL IT, WHICH HAS BEEN OBJECTED TO BY THE ATTORNEY GENERAL, IN EFFECT FOR THE COMING ELECTION FOR SCHOOL BOARD IN EAST CARROLL PARISH, WITH THE PROVISO THAT THIS WILL TRULY BE AN INTERIM REMEDY.

THIS PLAN AND THE TERMS OF OFFICE OF THOSE ELECTED, SHALL BE LIMITED UNTIL THE NEXT ROUND OF ELECTIONS IN THE SPRING OF 1995. AS I RECALL, A REPRESENTATIVE OF THE SECRETARY OF STATE'S OFFICE SAYS THAT'S THE NEXT TIME YOU CAN HAVE AN ELECTION IN LOUISIANA.

IS THAT CORRECT, MS. MORRIS?

MS. MORRIS: THAT'S CORRECT.

THE COURT: WHENEVER THOSE DATES ARE.

MS. MORRIS: APRIL 1ST AND 29TH.

THE COURT: I CAN'T HEAR YOU.

MS. MORRIS: THEY'RE APRIL 1ST AND APRIL 29TH.

[9] THE COURT: THAT'S THE DATES OF THE ELECTION?

MS. MORRIS: YES.

THE COURT: OKAY. WELL, THAT IS AUGUST 23RD. BY THAT TIME, EAST CARROLL PARISH

SHOULD HAVE IN EFFECT A PERMANENT PLAN WHICH, OF COURSE, MUST BE APPROVED BY THE DEPARTMENT OF JUSTICE UNDER SECTION 5 OF THE VOTING RIGHTS ACT.

I DON'T CARE WHAT PLAN IS APPROVED. I SAY APPROVED. THEY JUST HAVE NO OBJECTION. IT'S NOT TECHNICALLY UNAPPROVED. PERHAPS YOU CAN WORK WITH THESE PLAINTIFFS AND COME UP WITH SOMETHING THAT THE DEPARTMENT OF JUSTICE CAN APPROVE, ALL THE WHILE BEARING IN MIND THAT YOU DON'T WANT TO SPLIT PRECINCTS OR OTHERWISE FAIL TO COMPLY FULLY WITH LOUISIANA LAW UNLESS IT'S ABSOLUTELY NECESSARY TO DO SO.

WHATEVER THE PLAN IS MUST BE RESUBMITTED TO THE COURT WELL IN ADVANCE. OR, IF YOU WANT TO AGAIN SUBMIT COMPETING PLANS, THAT WILL BE ALL RIGHT, TOO, BECAUSE THIS IS ONLY ON A MOTION FOR PRELIMINARY INJUNCTION AND THE MERITS OF THE CASE HAVE YET TO BE REACHED. I THINK PERHAPS YOU WERE WISE, COUNSEL, IN SUGGESTING THAT WE NOT ADVANCE TRIAL OF THE MERITS, AS THE COURT SUGGESTED THE OTHER DAY. IF NECESSARY, THE COURT WILL FIX A TIME BY WHICH YOU NEED TO RESUBMIT THAT PLAN, BUT RIGHT NOW, [10] I'M NOT GOING TO DO IT. I THINK WE'RE TOO UNCERTAIN AS TO WHAT THE TIME MIGHT BE.

AS FAR AS I KNOW, THAT TAKES CARE OF THE BUSINESS WITH EAST CARROLL.

THERE REMAINS ON THE TABLE THE SCHOOL BOARD OF BOSSIER PARISH. BOSSIER HAS

SUBMITTED A PLAN TO THE DEPARTMENT OF JUSTICE, TO WHICH OBJECTION HAS BEEN TAKEN AND BOSSIER HAS FILED SUIT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

LET ME BACK UP ONE MINUTE. I DON'T FIND THAT THE EAST CARROLL PARISH SCHOOL BOARD HAS BEEN DELIBERATELY DRAGGING ITS COLLECTIVE FEET IN AN ATTEMPT TO BE DILATORY OR NOT REAPPORTION. AND THERE IS NO EVIDENCE BEFORE THE COURT THAT ANY OF WHAT WENT INTO THEIR PLAN IS DELIBERATELY INTENTIONALLY RACIALLY MOTIVATED OR INTENDED TO DILUTE BLACK VOTING STRENGTH OR OTHERWISE TO ATTEMPT TO PENALIZE OR DISENFRANCHISE MEMBERS OF THE MINORITY.

I THINK THE EAST CARROLL SCHOOL BOARD, AS HAS BEEN POINTED OUT, IS ONE OF THE POOREST PLACES IN THE—THE PARISH IS ONE OF THE POOREST PLACES IN THE UNITED STATES, AND I THINK THE BOARD HAS ATTEMPTED TO GET A REDISTRICTING PLAN IN AS ECONOMICAL A FASHION AS POSSIBLE. AND THAT'S ONE OF THE REASONS THEY WANTED TO DO IT THE SAME WAY THE POLICE JURY DID. BECAUSE THEY [11] DIDN'T HAVE TO HIRE SOME HIGH-PRICED EXPERT TO DRAW THEM A PLAN, IF THEY JUST ADOPTED THE POLICE JURY PLAN. AND WHEN THE DEPARTMENT OF JUSTICE OFFERED NO OBJECTION TO THE POLICE JURY PLAN, THAT CERTAINLY ENCOURAGED THEM TO THINK THAT IF IT'S SAUCE FOR THE GOOSE, IT OUGHT TO BE SAUCE FOR THE GANDER. OF COURSE, AS IT TURNS OUT, THEY WERE WRONG.

NOW, BACK TO BOSSIER. BOSSIER HAS SUBMITTED THE PLAN TO WHICH THE DEPARTMENT OF JUSTICE HAS MADE AN OBJECTION, AND A SUIT HAS BEEN FILED IN THE DISTRICT OF COLUMBIA. THE BOSSIER SCHOOL BOARD HAD MOVED FOR A STAY OF THESE PROCEEDINGS PENDING THE OUTCOME OF THAT PROCEEDING. I DON'T KNOW WHETHER I FORMALLY RULED ON THAT, BUT IF I HAVEN'T, THAT MOTION FOR THE STAY IS DENIED. OBVIOUSLY, WE HAVE PROCEEDED AND DID PROCEED.

THE SITUATION IN BOSSIER IS SIM LAR TO THE SITUATION IN EAST CARROLL IN THAT THE PLAN SUBMITTED BY THE BOSSIER SCHOOL BOARD TO THE DEPARTMENT OF JUSTICE IS IDENTICAL TO THAT WHICH WAS SUBMITTED BY THE BOSSIER POLICE JURY TO THE DEPARTMENT OF JUSTICE, TO WHICH NO OBJECTION WAS MADE BY THE DEPARTMENT.

THERE IS PERHAPS EVIDENCE OF SOME DELAY ON THE PART OF BOSSIER PARISH SINCE THE DEPARTMENT OF JUSTICE APPROVED THE BOSSIER POLICE JURY PLAN LONG AGO. I'VE FORGOTTEN JUST HOW LONG AGO. AND THERE WAS SOME [12] TIME LAG BETWEEN THAT APPROVAL AND SUBMISSION OF THE SCHOOL BOARD PLAN. BUT I DON'T FIND THERE IS ANY REAL EVIDENCE ON THE PART OF BOSSIER DELIBERATELY PERPETUATING THEMSELVES IN OFFICE, ALTHOUGH, THAT IS, OF COURSE, THE EFFECT OF NOT HAVING APPROVAL FROM THE DEPARTMENT OF JUSTICE, BECAUSE OF STATE LAW, WHICH PROVIDES THAT THEY SHALL

REMAIN IN OFFICE UNTIL THEIR SUCCESSORS ARE QUALIFIED.

THE PLAINTIFFS HAVE PROPOSED AN INTERIM PLAN FOR BOSSIER, AND, FRANKLY, THAT PLAN OFFENDS THE COURT BECAUSE IT MOST NEARLY RESEMBLES AN OCTOPUS AS IT STRETCHES OUT TO THE NOOKS AND CRANNIES OF THE PARISH IN ORDER TO COLLECT ENOUGH BLACK VOTING AGE POPULATION TO CREATE NOT ONE, BUT TWO, MAJORITY BLACK DISTRICTS IN BOSSIER. THE PERCENTAGE OF BLACK VOTING AGE POPULATION IN BOSSIER PARISH, ACCORDING TO THE INFORMATION SUBMITTED TO ME IS 17.7 PERCENT AND 20.2 PERCENT OF THE TOTAL PARISH POPULATION.

I'M NOT COMFORTABLE WITH THE PLAN PRESENTED BY THE PLAINTIFFS. I HAVE NOT HAD SUFFICIENT TIME OR SUFFICIENT EVIDENCE PRESENTED TO CONVINCE ME THAT SOME OTHER PLAN, WHICH COMPLIES WITH SECTION 2 OF THE VOTING RIGHTS ACT, CANNOT BE DRAWN THAT WILL RECOGNIZE COMPACTNESS AND WILL NOT ZIG-ZAG ALL OVER THE PARISH.

THIS COURT IS STILL OF THE OPINION THAT OTHER [13] PRINCIPLES OF DRAWING ELECTION DISTRICTS STILL APPLY, SUCH AS NATURAL BOUNDARIES AND HISTORICAL BOUNDARIES, RECOGNITION OF CITY LIMITS, RECOGNITION OF COMMON INTEREST OF A POPULATION, AND COMPACTNESS. THE PLANTIFFS' PLAN DOESN'T DO THAT.

I DON'T HAVE ANY EVIDENCE ABOUT THE PLAN SUBMITTED BY THE BOSSIER SCHOOL BOARD,

OTHER THAN THEIR LAWYER, MR. THORNTON, SAYS IT'S FINE. UNDER THOSE CIRCUMSTANCES, I CANNOT ORDER THE PLAINTIFFS' PLAN INTO EFFECT AS AN INTERIM PLAN, AND I DON'T HAVE SUFFICIENT INFORMATION ABOUT THE DEFENDANT'S PLAN TO FEEL COMFORTABLE ORDERING IT INTO EFFECT. UNDER THOSE CIRCUMSTANCES, I WILL DECLINE TO ORDER ANY PLAN INTO EFFECT AT THIS TIME.

IF THAT SEEMS RATHER ODD, IF IT'S IMPORTANT TO HAVE AN ELECTION IN EAST CARROLL, WHY ISN'T IT IMPORTANT TO HAVE AN ELECTION IN BOSSIER? WELL, IT IS. BUT DUE TO THE HASTE OF THESE PROCEEDINGS, THE ELECTION BEING SCHEDULED SO QUICKLY, THE COURT SIMPLY IS NOT SATISFIED WITH ANY PLAN WHICH HAS BEEN PRESENTED TO IT, NOR DO I HAVE SUFFICIENT INFORMATION TO FEEL COMFORTABLE IN ATTEMPTING TO DEVISE A PLAN OF MY OWN.

HOWEVER, BETWEEN NOW AND THE TIME WE TAKE THE MATTER UP ON THE MERITS, I WOULD EXPECT THAT ADDITIONAL PLANS BE PROPOSED. I DON'T THINK YOU CAN GET TWO [14] MAJORITY BLACK DISTRICTS IN THE PARISH OF BOSSIER WITHOUT GERRYMANDERING THE DISTRICTS. SO, I WOULD EXPECT BETWEEN NOW AND THE TRIAL OF THIS CASE ON THE MERITS BOTH SIDES MAY WELL WANT TO SUBMIT ADDITIONAL PLANS. AND BEFORE THE SCHEDULED TIME FOR ELECTIONS, IN THE SPRING OF NEXT YEAR, WE'LL HAVE A PLAN FROM THE COURT, OR BOSSIER SCHOOL BOARD WILL HAVE A NO OBJECTION BLESSING

FROM THE DISTRICT COURT IN THE DISTRICT OF COLUMBIA.

LET ME REPHRASE THAT SO THAT EVERYBODY UNDERSTANDS WHAT I'M SAYING. WE'RE GOING TO HAVE A PLAN FOR ELECTIONS NEXT SPRING, WHETHER THIS COURT DOES IT OR THE COURT IN THE DISTRICT OF COLUMBIA DOES IT. SO, AT THIS TIME THE COURT DECLINES TO ISSUE ANY INJUNCTION RELATIVE TO THE PARISH OF BOSSIER.

IF I NEED TO, I'LL MAKE SUPPLEMENTAL FINDINGS AND CONCLUSIONS.

I CAN'T THINK OF ANYTHING I HAVEN'T COVERED. IF I'VE OMITTED SOMETHING, SOMEBODY SOUND OFF. WE ONLY HAVE THESE TWO LEFT, DON'T WE?

ALL RIGHT, COURT WILL BE IN RECESS.

(COURT RECESSED AT 3:30 P.M.)

Excerpts from Appellee's Exhibit 15 (Direct Testimony of School Board Member Barry C. Musgrove)

[2]

* * * * *

Under the Police Jury plan which we adopted as our redistricting plan, my district would lose a large slice of territory in the south, the sparsely populated area I referred to earlier, and would gain [3] constituents a little to the north in the area of Parkway High School and in the Shady Grove area. If the Bossier Plan is adopted, I would be in the same district as Ms. Juanita Jackson. Another district would also have two incumbents living within its boundaries and two districts would have no incumbents. Personally, I do not intend to run again because to be a good and conscientious board member requires more time than I have. The bank I work for is expanding and my responsibilities require more travel which is very likely to interfere with my school board activities. I would not want to serve on the School board unless I had the time to attend to my duties conscientiously.

[5]

* * * * *

Either before the Police Jury plan was completed or during the process, we talked with Mr. Gary Joiner, the demographer who was assisting the Police Jury, about drawing our plan. Our Superintendent recommended that we hire him. I had met him earlier when I was campaigning for a candidate for the BESSIE Board (a Louisiana board regulating elementary and secondary education throughout the state) and attended a school board meeting in Claiborne parish (a short distance

from Bossier Parish and situated in North Louisiana). At the time Mr. Joiner was talking to the Claiborne Parish School Board, and this was the first time I was introduced to Mr. Joiner. I had no further contact with him until he came before our Board. I did at that time, however, know who he was. I do not remember whether the appeared before our board before he was hired by us. He might have. I believe in about August, 1992 that Mr. Joiner made a presentation to our board. I believe this presentation took place after a regular board meeting but it could very well have been scheduled at some other time. We huddled around the screen and as I recall, he showed us some options and answered questions from board members about their proposed districts. The only complete plan I specifically recall was the Police Jury plan. He seemed to be saying "I looked at this but it did not work out" when he discussed other options. He have us some background and [6] I recall him saying that he could not contrive a black majority district with the population demographics of the parish. He emphasized that the only way a black district could be drawn was to cut and split precinct lines which violated state law. He was also asking for our input, and he told us he was still working on options. Personally, I was looking for his recommendation because I considered him the expert, and I certainly knew nothing about demography. Basically, I was asking Mr. Joiner to come up with a fair and legal plan and, in fact, relying on him to do so.

At some point in the fall of 1992, Mr. George Price presented a plan that had been drawn by the NAACP. It was about the time we voted to adopt the Police Jury plan. Mr. Price at the Board meeting expressed concern that he and other blacks had had no input into

the redistricting process and that he would appreciate our looking at the NAACP plan that contained two black districts. Mr. David Harvey was then president of the School Board and he asked Mr. Joiner who was present if he had seen the plan. Mr. Joiner answered in the affirmative. When asked further about the plan, he said it violated Louisiana law because it cut or split precinct lines. I do not recall exactly how many precinct cuts he mentioned by the number fifty-six sticks in my memory. I recall Mr. Price saying that federal law supersedes state law and I also recall Mr. James Bullers, the Bossier Parish District Attorney and legal counsel to the Board, saying that we [7] were obligated to follow Louisiana law. In short, we could not split and cut precincts. That exchange certainly ruled out the NAACP plan for me and I would think for the rest of the board as well. I also recall that the NAACP map showed districts of very odd configurations.

As this point I was generally satisfied with the Police Jury plan because it seemed a fair plan, it was in harmony with the laws of Louisiana, and it had already been precleared by the Justice Department. It seemed inconceivable to any of us that the Justice Department would preclear the plan for the Police Jury and object to the identical plan for the School Board. My willingness to adopt the Police Jury plan was not to any degree whatever based on race; it was based on convenience and the fact that it had already been found acceptable. That would have been my position if it had contained three black majority districts. I, and I think most of the members of the School Board simply wanted an end to this matter in order to get on to other things.

I do not recall the Board ever directly telling Mr. Joiner to draw black majority districts. There was no necessity because he had already told us that if the options permitted, we should look at drawing one or more black majority districts. I left it to him to look at the options and if an option contained one or more black districts, I expected him to make us aware of it. I believe he was addressing this matter when he explained that he could not legally draw a black majority district that did not [8] violate Louisiana law. Mr. Joiner made it quite clear from the beginning that if he could draw a black majority district we would certainly be required to look at the option. After he had drafted the Police Jury plan, I suppose that he was prepared to tell us that he legally could not fashion a black majority district.

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Excerpts from Appellee's Exhibit 17 (Direct Testimony of School Board Cartographer Gary Dillard Joiner)

[5]

* * * * *

I would like to explain the enormity of the problem faced by the members of the Bossier Parish School Board in attempting to create black majority districts in Bossier Parish. As I have previously mentioned, it was illegal for the members of the school board to cut or split existing precincts. The only possible way to create black majority districts is on a census block level as opposed to a precinct level. But since that can't be done, you have to look at making precinct [6] cuts. When I attempted to create a black majority district within Bossier City the lowest number of cuts that I made was approximately fourteen (14). These precinct violations would have created fourteen new precincts inside Bossier City, primarily along the river. When I attempted then to add another black majority district to the north, the lowest combination of the two districts that I could come up with was something in the neighborhood of fifty-eight or sixty cuts. When I studied the original plan submitted by the NAACP which created two black majority districts, their plan had one hundred and sixty-two cuts. Each cut, and the creation of a new precinct requires a separate voting machine and a separate set of voting commissioners. This creates a serious additional cost factor for the voters of Bossier Parish, not to mention the confusion of the voter. To make matters worse for the members of

the Bossier Parish School Board was the fact that Mr. James Bullers, the District Attorney of Bossier Parish and their legal counsel, advised them that they could not adopt a plan that cut or created new precincts.

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U.S. Exhibit 23

Bossier Parish School Board Memoandum identifying minutes relating to redistricting

[Bossier Parish School Board letterhead omitted]

MEMORANDUM

Subject: MINUTES of the Bossier Parish School Board
Reference: Redistricting

Meeting Date	Page(s)	Reference
May 12, 1990	Page 54	Information on HB #1444 Delay of election 1990
October 18, 1990	Page 121	Motion to cooperate with BPPJ on redistricting
May 2, 1991	Page 212-213	Employment of demographer
September 5, 1991	Page 280	Maps outlining BPPJ districts
October 3, 1991	Page 294	Discussion/report
October 17, 1991	Page 300	Additional maps provided
August 20, 1992	Page 39	George Price addresses Board Re: Appointment of black to fill vacancy
September 3, 1992	Page 50	George Price presents NAACP district proposal

September 10, 1992	Pages 59-60	Appointment of black (Blunt) to fill vacancy in District K
September 17, 1992	Pages 61- 62	George Price presents NAACP plan for election districts
		Others address Board on redistricting
		Demographer presents recommendation
		Motion of intent to adopt and notice for public review
October 1, 1992	Pages 65-67	Resolution adopting reapportionment of 12 election districts
December 17, 1992	Page 99	Status of filing redistricting plan
March 18, 1993	Page 131	Dept. of Justice requests reformatting of material presented
April 1, 1993	Page 143	Report on resubmission of plan and demographer visit to Washington, D.C.
June 3, 1993	Page 170	Report on correspondence from Dept. of Justice

September 2, 1993	Page 212	Board instructs legal counsel to request Dept. of Justice to reconsider plan
September 16, 1993	Page 217	George Price objects to Board asking reconsideration ofplan
November 4, 1993	Pages 241-242	Employment of special counsel
November 18, 1993	Pages 244-245	Price reports letter sent to Attorney General requesting fees for counsel be denied
January 20, 1994	Page 69	Demographer asked to review plan for any possibilities of redrawing lines without gerrymandering
March 17, 1994	Page 297	Counsel to proceed in matters with Dept. of Justice
April 7, 1994	Pages 306-307	Ratification of employment of special counsel
May 5, 1994	Page 319	Discussion to ask Attorney General for opinion on when to employ special counsel

July 7, 1994	Page 345	Report on contact with special counsel
July 21, 1994	Page 351	Board receives information from special counsel
August 4, 1994	Page 354	Executive Session to discuss litigation
September 1, 1994	Page 368	Executive Session to discuss litigation
September 15, 1994	Page 376	Price requests cost of litigation

Excerpts from U.S. Exhibit 26 (Bossier Parish School Board Minutes, May 2, 1991)

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[212]

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The President said Dr. Peterson had asked that Item No. 13 on the agenda, a discussion of redistricting, be taken up next. Dr. Peterson introduced Gary Joiner, a demographer, who had drawn up a redistricting plan for the Bossier Parish Police Jury. Dr. Peterson said he would like for the board to meet with Mr. Joiner at another time to discuss what he has proposed to suit the needs of the police [213] jury, as a result of the 1990 Census. Dr. Peterson said that following Mr. Joiner's presentation he would recommend that the Board engage his services to begin the redistricting process for the School Board.

Mr. Joiner said Bossier Parish gained about four percent in population over the last ten years. Eastwood and Haughton have mushroomed and it is almost possible to create a district out of Dogwood and Country Place. He said it was not done, however. Over the next 10 years he said the Haughton area would likely gain another district and Bossier City would likely lose one. The northern portion of the parish, north of Benton, would likely be one district and could very well be a black district. Another borderline district is the southern portion of the parish, south of Sligo Road. The area along East Texas Street in Bossier City may also become a black district in the future.

The total black population of Bossier Parish as of 1990 is almost exactly 20 percent, Mr. Joiner said. He said there are currently no concentrations of black population heavy enough to provide for a majority black district.

Bossier Parish is one of only three parishes in the northern half of the state to have a net growth. Caddo Parish lost 4,000 people and Shreveport lost 10,000.

While the police jury has been under the gun to establish new district lines prior to October elections, Mr. Joiner explained that the School Board has the luxury of time. Board members would not campaign along the new district lines until 1993.

Mr. Joiner said his fee is $35.00 an hour and he estimates his work will take from 200 to 250 hours.

Mr. Musgrove asked that Mr. Joiner provide diagrams of current school board districts with the proposed police jury lines superimposed. He said color-coded maps could be provided.

Dr. Peterson recommended that Mr. Joiner be engaged by the School Board to plan redistricting lines. Motion was made by Mr. Musgrove and seconded by Mr. Harvey. The vote was unanimous.

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Excerpts from U.S. Exhibit 27 (Bossier Parish School Board Minutes, Sep. 5, 1991)

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[281]

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Mr. Gary Joiner, demographer, distributed sets of configuration maps outlining the new legal precincts for the Bossier Parish Police Jury. He requested that the members of the Board complete a survey of concerns. Mr. Joiner plans to work individually with members of the Board and in small groups to develop a reapportionment plan that the Department of Justice will approve.

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Excerpts from U.S. Exhibit 28 (Bossier Parish School Board Minutes, Oct. 3, 1991)

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[294]

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The board discussed the progress of the redistricting of election districts. Mr. Lewis stated that maps and other pertinent information had been sent to Mr. Gary Joiner, the demographer employed to prepare a redistricting plan.

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Excerpts from U.S. Exhibit 29 (Bossier Parish School Board Minutes, Oct. 17, 1991)

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[300]

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Mr. Gary Joiner, demographer, will provide map overlays illustrating the relationship of the present Bossier Parish School Board election districts with the redistricting map approved by the Bossier Parish Police Jury.

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Excerpts from U.S. Exhibit 30 (Bossier Parish School Board Minutes, Aug. 20, 1992)

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[39]

Mr. George S. Price, President of the Bossier Parish Branch NAACP, addressed the Board regarding immediate concerns that affect blacks in the Bossier Parish School System. Mr. Price presented a paper enumerating ten (10) solutions to these concerns: 1) the appointment of a black to fill the current vacancy on the Board; 2) development of an early recruitment program for black teachers, 3) diligence in recruiting, hiring, retaining, and promoting African Americans; 4) offering alternate certification to liberal arts majors; 5) development of a reassignment and transfer program to insure parity or equalization of minorities at all schools; 6) organize a recruitment program with predominantly black colleges; 7) encourage parish graduates to pursue education as a major and return to Bossier to work and live; 8) appoint a black to the vacant position in District K; 9) encourage Superintendent and Board to be actively involved in all communities; 10) guarantee participation of every Parish citizen in reapportionment of school board districts.

* * * * *

U.S. Exhibit 31

THURSDAY: September 3, 1992

20A THE TIMES' OPINION

[BANNER OMITTED]

▼EDITORIALS

Bossier board

Consider minority for vacancy

The facts speak for themselves: Of Louisiana's 66 public school boards, the Bossier Parish School Board is the only one without a minority member. It's also the only board that has *never* had a minority member.

Yet 20 percent of Bossier Parish's population is made up of minority citizens, according to the 1990 Census, and black students make up 28 percent of the system's enrollment.

But 90 percent of Bossier Parish teachers are white, and there are concerns that recruitment of minority teachers is lax.

Today, the Bossier Parish School Board has before it a unique opportunity to bring at least one of those numbers more in line with its constituency. In so doing, the board would offer a strengthened hand of good faith to the parish's minority community, its teachers, students and taxpayers.

With the resignation of District K member Bobby Moseley, its [*sic*] becomes the School Board's duty to

appoint someone to fill the slot until next spring's election.

Appointing a minority citizen would stand as clear evidence that the board hears—and wishes to address—concerns of minority taxpayers: diligence in minority teacher recruitment, development of a minority-majority student transfer program, encourage more involvement between school system administrators and taxpayers.

Moreover, the board would gain diversity that would put greater perspective on the decision-making table. And those Bossier Parish voters who have felt disenfranchised because of the board's current districts—none of which have majority-black voter registration—would feel newfound representation.

Existing district lines make it virtually impossible for a minority to gain election to the board. And that, understandably, has fostered the feeling among many minority taxpayers that their voice has been muzzled.

The board's district lines are almost sure to change when the parish draws up new boundaries prior to next year's election, and the redistricting likely will allow minority voters a stronger voice at the polls—and, ultimately, on the School Board.

But for now, the Bossier Parish School Board, as a taxpayer-elected body charged with meeting the needs of all its students, should consider the opportunity before it as a good faith way to begin the change.

Excerpts from U.S. Exhibit 32 (Bossier Parish School Board Minutes, Sep. 3, 1992)

[50]

* * * * *

Mr. James Abrams, 617 Kelly Street, Bossier City, Louisiana, addressed the Board regarding the appointment of a minority representative to fill the vacancy in School Election District *K*.

Mr. George S. Price, President of the Bossier Parish Branch NAACP and representing various black organizations throughout the parish, addressed the Board regarding the concerns of the black communities as to representation on the Board; recruitment of black teachers; role models, academic progress and participation in school activities for black students; and redistricting of election districts. Mr. Price presented the NAACP Proposal for Election Districts for the Board's consideration.

[51] The following resolution declaring a vacancy in School Election District *K* and calling for a special election to fill that vacancy was offered by Mrs. Gray and seconded by Mr. Hensley:

RESOLUTION AND PROCLAMATION OF THE BOSSIER PARISH SCHOOL BOARD ADOPTED AT THE MEETING OF SEPTEMBER 3, 1992

BE IT RESOLVED by the Bossier Parish School Board in regular session duly convened, that:

I. Acting under and in accordance with the Constitution and laws of the State of Louisiana, including

particularly L.R.S. 18:602 and L.R.S. 18:402, the Bossier Parish School Board does hereby resolve and proclaim that:

A. Due to the resignation of Robert H. Moseley, effective August 31, 1992, and, acting pursuant to L.R.S. 18:602(B), the Bossier Parish School Board does hereby declare that a vacancy exists in the position of the member of the Bossier Parish School Board from Election District *K*.

B. As the unexpired term of office of Robert H. Moseley, School Board member from Election District *K*, exceeds one (1) year, the Bossier Parish School Board, acting pursuant to L.R.S. 18:602(B) and L.R.S. 18:402(E)(1), does hereby order a special election to fill the aforementioned vacancy with the special primary election to be held on April 3, 1993, and the special general election to be held on May 1, 1993. The qualifying period for the special primary election shall be between Wednesday, January 27, 1993, and Friday, January 29, 1993. Such elections shall be conducted in accordance with the laws of the State of Louisiana.

II. BE IT FURTHER RESOLVED that this resolution and proclamation be immediately published in the official journal of this School Board.

III. BE IT FURTHER RESOLVED that, within twenty-four (24) hours hereof, a copy of this resolution and proclamation be sent to the Clerk of the District

Court for Bossier Parish and to the Secretary of State of the State of Louisiana by certified or registered mail.

IV. BE IT FURTHER RESOLVED that the Clerk of Court and Secretary of State, and all other officials having responsibilities with respect to said special election and this resolution and proclamation, be requested to perform the duties incumbent upon them.

The vote was as follows:

Yeas: Mr. David Harvey, Mrs. Susan H. Barrera, Mrs. Barbara Blaylock, Mr. Henry Burns, Mrs. Barbara W. Gray, Mr. Boyce "Dude" Hensley, Mrs. Marguerite Hudson, Mr. Barry Musgrove, Mr. Tom Myrick, and Ms. Michelle Rodgers.

Nays: None.

Absent: Mrs. Ruth Sullivan.

The resolution declaring the vacancy in School Election District *K* and calling a Special Election was adopted.

[52] The members of the Board agreed on the following procedure as read by the President for filling the vacancy until the special election:

PROCEDURE FOR FILLING VACANCY IN SCHOOL ELECTION DISTRICT *K* UNTIL SPECIAL ELECTION

Persons interested in filling the vacancy in School Election District *K* until the Special Election may send a letter of intent and a resume to David Harvey, President of the Bossier Parish School Board, P. O. Box 2000, Benton, Louisiana 71006. Letters of intent will be received until 4:00 p.m. on Wednesday, September 9, 1992. Letters received

after 4:00 p.m. or application by phone call will not be considered.

A special meeting of the Board will be held at 5:00 p.m. on Thursday, September 10, 1992, at the Central Office in Benton, Louisiana, to interview those persons who have made written application to fill the vacancy. Interviews will be scheduled alphabetically by last name. Any interested person must attend the interview to be considered for the vacancy.

Following the interviews, the Board will discuss and appoint a member to represent School Election District *K* until the special election is held. The person appointed will be sworn in at the meeting of September 17, 1992.

Mr. Gary Joiner, demographer, was present to review the legalities involved in the redistricting process according to the 1965 Voting Rights Act. Redistricting is mandated every ten years as based on population reported by the United States Department of Census. The Board is required to submit a plan by December 31, 1992, for the approval of the United States Department of Justice. Mr. Joiner provided maps with proposed district lines and discussed the proposals before the Board for further review before a recommendation is presented.

* * * * *

Excerpts from U.S. Exhibit 34 (Bossier Parish School Board Minutes, Sep. 17, 1992)

[61]

* * * * *

Miss Wilna Mabry, Clerk of Court, Parish of Bossier, State of Louisiana, was present to deliver the Oath of Office to Jerome A. Blunt, Election District *K*.

* * * * *

Mr. George S. Price addressed the Board representing the following organizations: NAACP, Men's Club of Bossier, Voters League, Concerned Citizens, Bossier Housing Tenant Coalition, and the Concerned Parents of Plain Dealing. Mr. [62] Price presented a plan developed by the NAACP for the redistricting of School Election Districts.

Mr. Herschel Brown, 249 W. 77th Street, Shreveport, Louisiana, and Mr. Ed Wempe, 617 Sistrunk, Bossier City, Louisiana, also addressed the Board regarding district representation and redistricting of election district lines.

Mr. Gary Joiner, demographer, reviewed the processes involved in adopting a redistricting plan for election districts for submission to the United States Department of Justice. Mr. Joiner, as the Board's consultant, presented a redistricting plan for the Board's consideration.

A motion of intent to adopt the redistricting plan for school election districts as recommended by the demogapher was made by Mr. Hensley and seconded by Mrs. Gray. The vote was unanimous.

The President stated that maps outlining the intended school districts will be on display during office hours for examination by the public until 4:00 p.m. Thursday, September 24, 1992. At 7:00 p.m., Thursday, September 24, there will be an official called meeting of the Board for public input regarding the recommended school election district lines. Input from the September 24 meeting will be considered by the Board and the Board's consultant, and final action will be taken on the redistricting of school election districts at the meeting of October 1, 1992.

* * * * *

Excerpts from U.S. Exhibit 35 (Minutes of Bossier Parish School Board Public Hearing, Sep. 24, 1992)

BOSSIER PARISH SCHOOL BOARD

September 24, 1992

PUBLIC HEARING

REDISTRICTING OF SCHOOL ELECTION DISTRICTS

A public hearing on the redistricting plan for school election districts, which had been duly advertised as available for inspection by the public at the Bossier Parish School Board Central Office, was held in an official session at 7:00 p.m. on Thursday, September 24, 1992, at the regular meeting place in Benton, Louisiana. All members of the Board were present except Susan Barrera and Boyce "Dude" Hensley. District Attorney James Bullers was also present, as were members of the staff.

Forty persons registered their attendance. The President welcomed the persons assembled and stated that the hearing was scheduled to receive public input and comments regarding the Bossier Parish School Board's motion of intent to adopt election district lines in accordance with Bossier Parish Police Jury lines, as approved by the United States Department of Justice.

The President opened the floor for public comment. The following people addressed the Board:

Name	Address	City	Telephone
George S. Price	2110 Venus Dr.	Bossier City	746-1737
James Bullers, D.A.	P.O. Box 69	Benton	965-2332
Herschel Brown	249 W. 70th	Shreveport	687-7097
Rev. Dorothy Whitehead	1906 Scott St.	Bossier City	746-2675
Andrew Davis, Jr.	Rt. 2, Box 288	Plain Dealing	
John Dansby	1912 Camille	Bossier City	742-8472
Helen Williams Paige	P.O. Box 5580	Bossier City	
Chauncy Wilkins	Box 473	Plain Dealing	
Betty Rettig	Box 1535	Plain Dealing	
Clarence Smith	P.O. Box 483	Plain Dealing	326-5097
Essie Graham	Rt. 2, Box 107	Plain Dealing	326-4763
Jerry Hawkins	P.O. Box 334	Benton	965-9038
Ed Wempe	617 Sistrunk Lane	Bossier City	
Grace Jenkins	P.O. Box 656	Benton	965-0423
Thelma Harry	902 Wright Ave.	Benton	

There being no further comment, the meeting was adjourned at 8:00 p.m. on motion by Mrs. Blaylock and seconded by Mrs. Hudson. The vote was unanimous.

Excerpts from U.S. Exhibit 36 (Bossier Parish School Board Minutes, Oct. 1, 1992)

* * * * *

[65]

* * * * *

It was moved by Marguerite Hudson and seconded by Michelle Rodgers adopting the following resolution:

RESOLUTION

By the Bossier Parish School Board:

A Resolution reapportioning Bossier Parish into twelve school board districts

BE IT RESOLVED, by the Bossier Parish School Board, meeting in legal session convened, that it does hereby establish twelve school board districts which, in total, shall comprise the whole of Bossier Parish, Louisiana.

[66] BE IT FURTHER RESOLVED that the precincts used to comprise the twelve school board districts are the same precincts numbered and described by the Bossier Parish Police Jury and adopted on April 30, 1991 in Ordinance Number 3153 of 1991 and precleared by the U.S. Department of Justice on July 29, 1991 and that those enumerated precincts shall be apportioned as follows among the twelve respective school board districts, to wit:

DISTRICT ONE:

Precinct 4-3C, Precinct 4-5, Precinct 4-6, Precinct 4-7, Precinct 4-8B, and Precinct 4-9.

DISTRICT TWO:

Precinct 4-3B, Precinct 4-4, and Precinct 4-11B.

DISTRICT THREE:

Precinct 2-1, Precinct 2-18B, Precinct 2-22, Precinct 4-2, and Precinct 4-3A.

DISTRICT FOUR:

Precinct 2-18A, Precinct 3-1, Precinct 3-2, Precinct 3-3, Precinct 3-4, Precinct 4-1, and precinct 4-3D

DISTRICT FIVE:

Precinct 2-3, Precinct 2-17A, Precinct 2-21B, Precinct 4-11A, and Precinct 4-11C.

DISTRICT SIX:

Precinct 2-2, Precinct 2-4, Precinct 2-7, Precinct 2-10, Precinct 2-18C, and Precinct 2-21A.

DISTRICT SEVEN:

Precinct 2-5, Precinct 2-6, Precinct 2-8, Precinct 2-9, and Precinct 2-12B.

DISTRICT EIGHT:

Precinct 2-11, Precinct 2-12A, Precinct 2-17B, and Precinct 2-19.

DISTRICT NINE:

Precinct 2-12C, Precinct 2-13, Precinct 2-14, Precinct 2-20, and Precinct 2-23.

DISTRICT TEN:

Precinct 2-15 and Precinct 2-16.

DISTRICT ELEVEN:

Precinct 1-2, Precinct 1-3, Precinct 1-4, and Precinct 1-5.

DISTRICT TWELVE:

Precinct 1-1, Precinct 4-8A, Precinct 4-8C, and Precinct 4-10.

BE IT FURTHER RESOLVED, THAT if any provision or item of this resolution or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications which can be given effect without the invalid provisions, items or applications, and to this end, the provisions of this ordinance are hereby declared severable.

[67] BE IT FURTHER RESOLVED, THAT all resolutions or parts of resolutions in conflict herewith are hereby repealed.

YEAS: David Harvey, Susan H. Barrera, Barbara Blaylock, Henry Burns, Boyce "Dude" Hensley, Marguerite Hudson, Barry Musgrove, Tom Myrick, Michelle Rodgers, and Ruth Sullivan.

NAYS: None.

ABSTAIN: Jerome A. Blunt.

ABSENT: Barbara W. Gray

The resolution was adopted by a vote of 10 yeas, 0 nays, 1 abstain, and 1 absent.

In the discussion before the official vote, Mr. Blunt expressed appreciation for the concerns of the coalition of minority citizens who had participated in the process of redistricting and encouraged the members of the Board to involve and cooperate with the minority coalition in the operation of board and school programs so that they might feel part of the whole community. Later in the discussion, Mr. Blunt stressed the need for cooperation with any coalition, whether black or white, who address the Board through interest or concern for the children of Bossier Parish.

Mr. Myrick stated for the record, "The Board worked on reapportionment for over a year. The redistricting plan was discussed extensively in various groups. There was a lot more involved than the issue of black and white. Other considerations of personal ambition or opinion must give way to public good. It isn't easy to develop a plan to please everyone. The Board has functioned as fairly as possible working through the democratic process of majority rule."

Mr. Hensley stated for the record that members of the Board truly represent everyone in their districts and said that he has done so both as school principal and as a board member.

* * * * *

CHRONOLOGY OF EVENTS

1983	
Nov. 19	Jerome Darby elected to Policy Jury.
1990	
Nov. 13	Police Jury hires Gary Joiner to develop redistricting plan.
Dec. 6	Police Jury Finance Committee appoints Technical Advisory Reapportionment Committee to work with Joiner on redistricting; Jerome Darby not included on the Reapportionment Committee.
Dec. 11	Darby protests exclusion from Committee as a denial of "equal representation"; Policy Jury votes to appoint him and white Juror James Elkins on the Committee.
1991	
Jan. 15	Police Jury passes over Jerome Darby for Presidency of Police Jury.
Jan. 15 to Arpil 9	Joiner meets privately in his office with groups of 2 toor 3 Police Jurors to discuss district configurations in their area. School Board member Thomas Myrick attends some of these meetings; meets with Joiner approximately five times.

April 1 to May 15	Statutory "window" under Louisiana law Police Juries to subdivide election precincts for redistrictingpurposes.
April 9	Public Police Jury redistricting hearing. Joiner presents 3 proposed plans, states that precinct splitting would be allowed through 5/15/91.
April 25	Public Police Jury redistricting hearing. Black residents ask questions regarding black-majority district; are told that black population is too scattered to allow black district. Police Jury votes to pursue Joiner's Plan 9 for final adoption at next meeting.
April 30	Public Police Jury redistricting hearing. Joiner states that precinct changes could be made after 1/1/93 so as to consolidate precincts and reduce administrative election costs. Police Jury adopts Plan 9 as final plan. Concerned Citizens present letter to Police Jury complaining about redistricting process.
May 2	Joiner attends School Board meeting; is hired by School Board; estimates 200-350 hours to complete redistricting. Joiner states that School Board has more than adequate time to draw districts since the next School Board election is not until 1994.
May 14	Jerome Darby discusses Concerned Citizens letter at Police Jury meeting.

May 28 — Police Jury submits Police Jury Plan to Department of Justice.

July 29 — Department of Justice preclears Police Jury plan.

Sept. 5 — First School Board meeting at which redistricting discussed in substance. Joiner distributes precinct maps; states that School Board would have to work with Police Jury to alter precinct lines if it favored a plan which split precincts. Myrick immediately suggests adoption of Police Jury Plan.

1992

March 25 — NAACP representative George Price writes letter to Superintendent Lewis requested that NAACP be included in all phases of redistricting process; letter distributed to School Board members. No action taken on letter.

July 22 — *Hays* v. *Louisiana* (*Hays I*) filed in federal district court.

Sometime in August — Jointer meets privately with School Board members, demonstrating redistricting computer and showing alternative redis tricting scenarios. NAACP not notified of meeting.

Aug. 7 — District court in *Shaw* v. *Barr* dismisses plaintiff; 14th Amendment gerrymander-

ing claim as failing to state a cause of action.

Aug. 17 — Price writes second letter to Lewis, requesting that NAACP be allowed to come before the School Board to present their views on redistricting, and stating opposition to PJ Plan or any other plan diluting minority voting strength.

Aug. 20 — Price presentation at School Board meeting re: various concerns, including appointment of black School Board member to fill an existing vacancy, and participation of all parish citizens in redistricting. No specific action is taken by School Board on these requests.

Between Aug. 25 — Price presents NAACP may of 2 illustrative black- majority districts to school and district official, who rejects plan because it does not 8/27/92 contain a full 12 districts.

Aug. 26 - Augu. 27 — Preliminary injunction hearing in *Hays* v. *Louisiana (Hays I)* in federal district court.

Aug. 27 — District court in *Hays I* denies plaintiffs' motion for preliminary injunction, discusses plaintiffs' constitutional claims, allows briefing on Section 2 vote dilution claims only.

Sept. 3 — Price presents full, 12-district NAACP Plan at School Board meeting. Jointer and School Board members summarily dismiss

NAACP Plan because it crosses existing precinct lines.

Sept. 10 — Jerome Blunt Appointed as first black School Board member in Bossier Parish history by a 6-5 vote at a special School Board meeting.

Sept. 17 — Jerome Blunt sworn in as member of School Board. At same School Board meeting, Price again presents NAACP Plan on behalf of the NAACP, Concerned Citizens of Bossier Parish, Men's Club of Bossier, Voter's League, Bossier Housing Tenant Coalition of Concerned Parents of Plain Dealing. School Board unanimously passes a motion of intent to adopt the Police Jury Plan, schedules 9/24/92 public hearing and 10/1/92 meeting for final action.

Sept. 24 — School Board hearing on redistricting held with full- capacity crowd. Price presents petition with over 500 signatures, urges consideration of NAACP Plan as a foundation for the creation of a plan with black-majority districts.

Oct. 1 — At School Board meeting, School Board adopts Police Jury Plan 10-1-1, Jerome Blunt abstaining (on member absent).

Dec. 31 — Date under Louisiana law by which school boards must reapportion.

1993

Jan. 1 — Date under Louisiana law after which parishes could reconsolidate their precincts.

Jan. 4 — School Board submits plan adopted by Police Jury ("Proposed School Board Plan") to Department of Justice.

Jan. 26 — "Community Affairs Committee," formed at request of black community, holds its first meeting to discuss School Board matters.

March 5 — Department of Justice asks School Board for more information re: redistricting plan.

March 16 — School Board disbands Community Affairs Committee.

June 29 — Supreme Court issues opinion in *Shaw* v. *Reno*

Aug. 19 - Aug. 29 — Supplemental evidentiary hearing in Hay v. *Louisiana* (*Hays I*)

Aug. 30 — Department of Justice objects to School Board's Proposed Plan. Objection letter points out the School Board's option of asking the Police Jury to change precinct lines to allow drawing of black-majority districts.

Aug. 31	Copies of Department of Justice objection letter provided to all School Board members.
Sept. 2	In executive session at School Board meeting, School Board discusses its options in light of Department of Justice objection. No discussion of attempting to draw black-majority districts occurs. In public, School Board unanimously votes to seek reconsideration from Department of Justice.
Sept. 3	School Board seeks reconsideration of objection in letter to Department of Justice.
Sept. 16	Price presentation at School Board meeting on behalf of coalition of black organization asking School Board to reconsider its decision to seek withdrawal of objection. School Board does not respond to Price's suggestion.
Dec. 20	Department of Justice declines to withdraw objection.
Dec. 28	LA district court issues decision in *Hays* v. *Louisiana*
1994	
Jan. 11	Police Jury resolves not to redraw its redistricting plan.
July 8	School Board files *Bossier Parish School Board* v. *Reno*.

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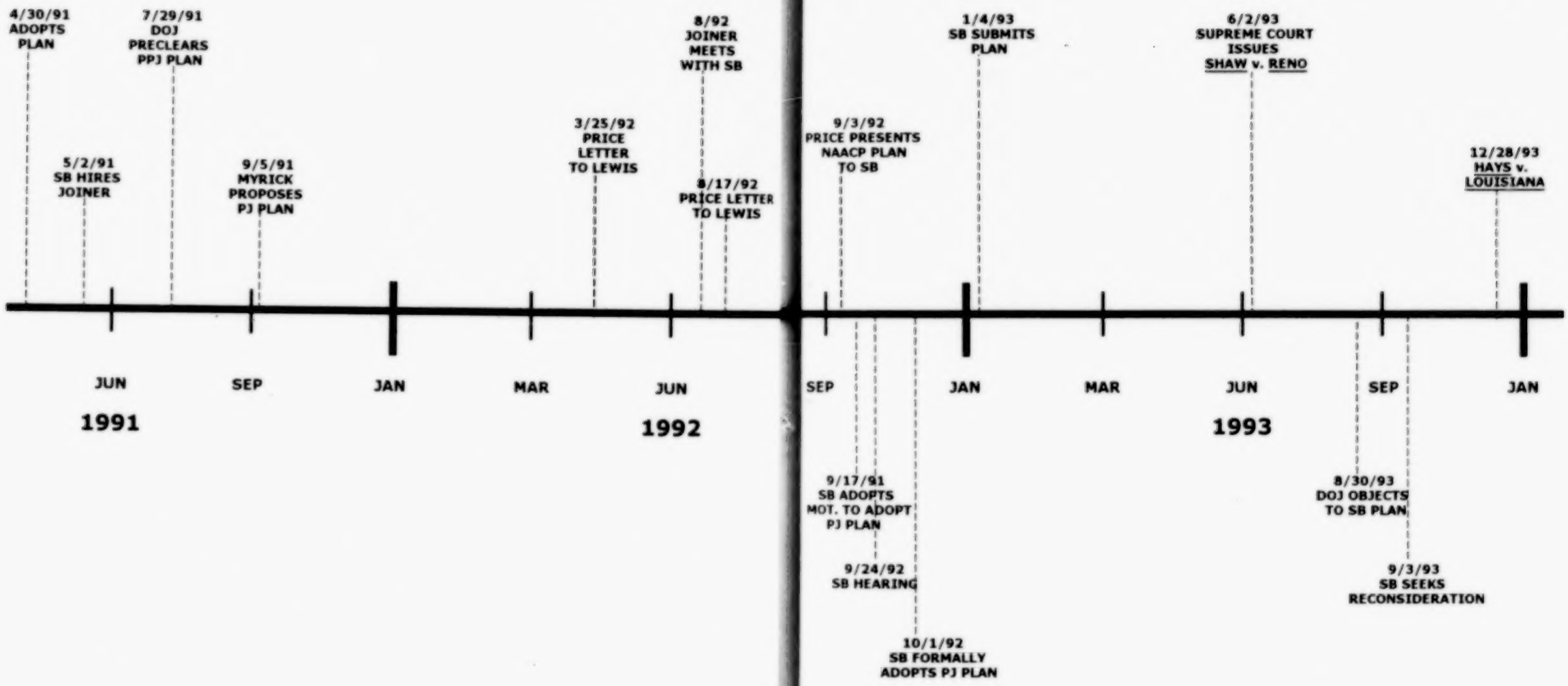
CHRONOLOGY OF EVENTS



Excerpts from Government Exhibit 86 (Designations of portions of Deposition of School Board Member Susan J. Barerra dated September 30, 1994)

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[60]

* * * * *

Q. Why does Bossier Parish still have schools with predominantly black student enrollment?

A. Because those people have not moved into predominantly white neighborhoods.

* * * * *

Excerpts from Government Exhibit 87 (Designations of portions of Deposition of School Board Member Barbara Blaylock dated October 6, 1994)

* * * * *

[97]

* * * * *

Q. Why does Bossier Parish have predominantly black schools?

A. Have predominantly black? Probably because of just the area in which they are.

* * * * *

Excerpts from Government Exhibit 90 (Designations of portions of Deposition of School Board Member Henry Burns dated October 6, 1994)

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[119]

* * * * *

Q. Why does the Bossier Parish school district have schools with predominantly black student enrollment?

A. Why do Bossier Parish schools have schools that have predominantly black enrollment? Well, I am only, like, high schools or elementary schools.

Q. Well, for example, Butler Elementary School. Why, in your view, is Butler Elementary School a predominantly—first of all, are you aware that the district has schools that are—

A. Yes, like Plain Dealing and brand [sic] Bossier High. I am pretty well familiar with the percentages at most of the schools, but I think the neighborhood school concept.

* * * * *

[120]

* * * * *

Q. And Butler Elementary School and Bossier Elementary School are also near one another; isn't that true, are physically near one another?

A. Yes.

Q. What about Plain Dealing High School and Plain Dealing Elementary School is that the same?

[121]

A. Yes. They are located in the northern, you know, rural part of the parish.

Q. I take it their predominantly black student enrollment, in your view, is due to the demographic makeup of the area of their attendance boundaries?

A. Yes.

* * * * *

Excerpts from Government Exhibit 93 (Designations of portions of Deposition of School Board Member Barbara Gray dated September 19, 1994)

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[68]

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Q. When you were talking about the two areas where you though it would be possible, if you sat aside concerns about splitting precincts to conceivably draw a black majority district, you [69] mentioned the Plain Dealing area and you also mentioned district G, Ms. Sullivan's district, when you talk about District G, are you talking about District G in the current plan as opposed to the proposed plan?

A. The current plan that we have, that is what I am referring to.

Q. Let me hand you what I have marked as School Board Exhibit Eleven and let me just ask you, is that the old plan from the 1980s, the one that current school board members are sitting under?

A. Yes.

Q. On that document, is that the District G that you are talking about?

A. Yes. Wait a minute, let me see. No. No. District J is the one. And possibly G, but I would say J over G first. I got G and J confused and I am sorry.

Q. Both of those districts are in the Bossier City area?

A. Right.

Q. And District G is the district that contains or is quite near Bossier Elementary and Butler Elementary?

A. Yes.

[70]

Q. Which are both predominantly black elementary school[s], right?

A. Yes.

* * * * *

[71]

* * * * *

Q. And, isn't it a fact that today Butler is a predominantly a black school?

A. It may be. Yes.

Q. And isn't it a fact that when you joined the board—?

A. That is not—that is just because that is where they happen to live.

Q. And I guess that the same would be true for Bossier elementary school, which is even more predominantly black?

A. That happens to be, I guess, where they have their population that feeds the school.

* * * * *

Excerpts from Government Exhibit 94 (Designations of portions of Deposition of former Bossier Parish Administrator James Ramsey dated October 13, 1994)

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[14]

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Q. You also mentioned that the school board operates under different criteria with respect to redistricting from the Police Jury, correct?

A. They have different considerations that they have to look at, yeah. They did. They don't any more, but they did at that time.

Q One example you gave was taxing districts?

A. I would say that was the main.

Q. Could you explain what taxing districts are?

A. The parish was divided into—I don't remember now how many taxing districts. They were for the purpose of financing the school plans in those different areas. It was geographically divided, like Haughton and Plain Dealing and Bossier City was divided into I don't know how many. I wasn't familiar with them. But, anyway, those were districts. When they made the determination, they [15] being the school board, that they wanted to increase plant size or school size, the people of those districts were called upon to vote for

a bond issue, a bond election to finance those. And it don't cost anybody outside that district.

Q. Was the bond election held only within the taxing district?

A. Yes.

Q. What other differences were there between the school board and the Police Jury regarding these criteria? One example is taxing districts.

A. You mean difference between the Police Jury and school board as elected bodies?

Q. Yes.

A. They wasn't anything similar. I mean, they were responsible to the children and the education part of the parish. The Police Jury's responsibility was for road, bridges, primarily, and drainage of their system, plus they were the governing agency or governing body of the parish. They adopted laws and ordinances and things that regulated certain activities. Zone property, we did. You know, they weren't even tied. They were two totally separate entities.

* * * * *

Excerpts from Government Exhibit 95 (Designations of portions of Deposition of School Board Member Juanita Jackson dated September 29, 1994)

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[10]

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Q. Do you know if there are any other incumbents that would be pitted against one another under the proposed school board plan?

A. My understanding is that Mr. David Harvey and [11] Ms. Barbara Gray would be against each other if they both decided to run.

Q. Do you know if they are planning on running?

A. Ms. Gray had said that she is not.

Q. Do you know why she is not running?

A. I believe her comment has been that she has served numerous times, or years, and she wants to spend time with her grand children and family.

Q. Do you know if Mr. Harvey is going to run?

A. I understand that he is, but I have not spoken with him personally.

Q. Are you aware of any other incumbents that are pitted against one another?

A. No.

* * * * *

[36]

* * * * *

Q. Why does the school district still have predominantly black schools?

A. Our attendance lines determine where a person would go to school and if the area surrounding that school is predominantly black, that is where they would go to school.

Q. Where are those areas that are predominantly black?

A. Plain Dealing. And I do not [know] if there are any others that are predominantly black.

Q. Are you aware that Bossier Elementary School is predominantly black attendance?

A. I know that we do have blacks and whites attending there, but I do not know what the racial makeup is.

[37]

Q. Are you aware that Butler elementary school is [37] also predominantly black?

A. Because of the location of those schools, if the area surrounding them is predominantly black, then they would be predominantly black, but I really do not know.

Q. They are in the Bossier City area; is that correct?

A. Yes.

Q. And they are [near] one another?

A. Yes, they are.

* * * * *

Excerpts from Government Exhibit 96 (Designations of portions of Deposition of Bossier Parish Registrar of Voters William Johnston dated October 12, 1994)

* * * * *

[10]

* * * * *

Q. Okay. You change and realign precinct boundaries even separate and apart from reapportionment, correct?

A. We do, yes.

Q. How—about how often do you do that?

A. Oh, three or four years, every three or four years.

* * * * *

Q. When you do the precinct realignments you can take a larger precinct and split it into two—that might be one thing you could do, correct?

A. You could.

Q. Another thing you might do is take two smaller precincts combine them into one, correct?

A. You could.

Q. That's called a precinct consolidation?

[11]

A. Uh-huh. (Affirmative)

Q. And you could actually split a large precinct into more than two if you wanted to, correct?

A. Well, it depends on a lot of—on certain situations.

Q. Okay. Tell me about that.

A. Well, it depends if it's inside the city limits or outside the city limits. In other words, the precinct has to be wholly within or without the city limits. In other words, you can't take a precinct and have part of it in and part of it outside the city limits.

Q. So you couldn't consolidate a precinct outside the city limits with one that's inside the city limits?

A. No.

Q. But you could consolidate two precincts that were inside the city limits together?

A. We could if it was approved by the Justice Department.

Q. And you could consolidate—two precincts that were outside the city limits you could consolidate them together?

A. If it was approved by Justice Department.

* * * * *

Excerpts from Government Exhibit 97 (Designations of portions of Deposition of School Board Member David L. Harvey dated September 30, 1994)

* * * * *

[60]

* * * * *

Q. And at this point, do you intend to run again?

A. Yes.

Q. Who would be your potential incumbent opponent?

A. Ms. Gray.

Q. Do you know if she intends to run again?

A. I can only tell you what she has said to me, that she does not intend to run for reelection, however, that change, if she disagrees with me about something, she may decide—

* * * * *

[62]

* * * * *

Q. Are you aware of what the district's obligations are under the consent decree?

A. No. I am not familiar with it.

Q. Why is it that the Bossier Parish school district has predominantly black schools?

A. Predominantly black schools.

Q. Yes. Schools with predominantly black student enrollment?

A. I would suppose it has to do with the fact that our schools are set up on what I would regard as the neighborhood school concept. Children attend school at a school near their home. I do not know, historically back years ago when busing was a real hot issue in many parts of the country, [63] at that point, I was not involved in school board activities. I do not even remember if I had any children at that time. I do not know if busing was an issue here to get children moved around for purposes of racial balance or anything like that. It is just, ever since I have been a resident of Bossier Parish, we have more or less, and I am using my own term, my [sic] operated on the basis of a neighborhood school concept.

Q. If Butler Elementary School and Bossier Elementary School were both predominantly black schools, it would be largely because they are in black neighborhoods?

A. I would suspect so, yes.

Q. Why is it in your view that Plain Dealing Elementary and Plain Dealing High School are predominantly black?

A. Those schools are located in rural parts of the parish and, I believe would more than likely be populated by predominantly black families. It seems to make sense to me.

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Excerpts from Government Exhibit 98 (Designations of portions of Deposition of School Board Member Boyce Hensley dated September 30, 1994)

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Q. Mr. Hensley, I am going to show you what has been marked as Exhibit Number Eight. I do not believe that you have seen this. That has been identified as a letter from Mr. Price, representing the NAACP. Could you describe the substance of that letter, what is Mr. Price requesting in that letter?

A. He is asking that we, as a school board, allow him to take part in the drawing process, I guess, of the new district[s].

Q. What is the date of that letter?

A. March 25th, 1992.

Q. Do you ever recall seeing that letter before?

A. Yes, Ma'am. I had a copy of this in one of my packets when we met as the school board.

Q. Who gave you that packet?

A. Each member of the school board receives a packet each time that we have a board meeting, which is on the first and third Thursday of each month at 7:30.

Q. Which packet was this letter included in, was it included in the March 25th, 1992?

[29]

A. No, It would probably be in April. We probably already met twice when this was there. It was probably in April.

Q. Why do you think that that was when it was probably included in your packet?

A. Because the superintendent always, when he gets something that is addressed to the board, he places it in everybody's packet that they get at the next board meeting.

Q. So, it would be custom, for Mr. Lewis' practices, in informing the school board of letters that he got to include it in a packet that would come to come to [sic] every board member before a regular meeting, that would have been included in some packet sent to you by Mr. Lewis?

A. No, ma'am. It probably would have been in the packet that we receive[d] the first Thursday in April.

Q. So, he would have included it in the packet—

A. At the next meeting.

Q. Right after he received it.

A. That is correct.

Q. It is because of that custom that you think, and tradition that you think you received that letter at that meeting.

A. Yes, Ma'am.

[30]

Q. But you have seen that letter before?

A. Yes, ma'am.

Q. Every board member would have received that letter at the same time you did; is that correct?

A. In the twelve packets that are made, they are all exactly alike and I am sure that when I got one, that they each got one.

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[73]

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Q. Why does the Bossier Parish public school system have predominantly black schools today?

A. Because of the location of the school and the community concept.

Q. So, [Butler] Elementary School and Bossier Elementary School are predominantly black schools

because they are in predominantly black neighborhoods?

A. That is correct.

Q. And, in fact, they are contiguous, their attendance zones are very near one a other, those two schools?

A. Yes, sir.

Q. Similarly Plain Dealing Elementary School and Plain Dealing High School are predominantly black [74] in your view, for what reason?

A. Because the people that live in that area, the neighborhood system there, the percentage is higher with black than it is in the Airline district.

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Excerpts from Government Exhibit 99 (Designations of portions of Deposition of School Board Member Marguerite Hudson dated September 29, 1994)

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Q. Do you know what the percent of—the black percentage student enrollment is in the public schools in Bossier Parish?

A. No, but I could know. It is certainly not anything like with Caddo has. It is around—I [14] don't know. I would rather not guess on the record. I have an idea though.

Q. What is your idea?

A. Well, it is not 20 percent. I don't believe it is 20 percent.

Q. Is it more or less?

A. Less.

Q. Less than 20 percent black students?

A. Yes. But that's—I really don't like to go on the record with being that vague.

Q. What is the minority student enrollment in Caddo Parish? Approximately?

A. It is more than 50 percent. It is about 60/40, I believe. This is common understanding. I am not sure that it is valid figures.

Q. Does that make a difference between the two parishes and the school system?

A. Their ratio as contrasted to our ratio?

Q. Yes.

A. It does.

Q. And what is the difference?

A. You are asking me, "Does it make a difference?"

Q. Yes.

A. And it makes a difference in that some [15] people from Caddo, a good many people have moved to Bossier Parish, in order to get to a school system which has a higher white ratio to blacks. That is one of the reasons that the parish, Bossier Parish is increasing in population, as much as it is. That is just about it.

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[85]

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Q. Why is it that the [sic] Bossier Parish has predominately black schools, in 1994'

A. Well, the black children's parents do not have cars to transport them to white schools.

Q. So the District doesn't provide transportation for a majority/minority plan?

A. We would. We do. We have that written into our policy. And we would. They do not want to go to a majority white, they want to stay right with their own. They know that they can go to a majority white. They want to stay right with their own.

They know that they can go from majority to minority, I mean, from minority to majority, and we would give them transportation. They can get a—

Q. So why are there predominately black schools?

[86]

A. They like to go to school with their community.

Q. So it is a question of residential area[s], that are predominately black?

A. Right. Right. It is fiction that they want to go out there, and be with some people that they are not like.

Q. So,—

A. —you just go into one of these schools, and just ask them.

Q. So, Butler Elementary School, and Bossier Elementary School, are predominately black schools in your view, because they are in predominately Black neighborhood in Bossier City?

A. Certainly. Certainly.

Q. An the new one, that is?

A. Right. I believe our policy says that they would have to, I don't know about the transportation. I would need to look at the written policy.

Q. What about Plain Dealing Elementary, and Plain Dealing High School, those are also predominately Black schools, aren't they?

A. What about it?

Q. They are predominately Black schools.

[87]

A. What do you want me to say about it?

Q. Yes, or no?

Q. Oh, they are. And those people love to live in Plain Dealing. They love to live up there.

Q. Okay.

A. And most of them don't want to get a big job, they would just rather stay out there in the country, and stay on Welfare, and stay in Plain Dealing.

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[96]

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Q. Okay, would you say—are you familiar at all with Bossier City?

A. Oh, indeed.

Q. Okay. Would you say that there are indeed, [97] communities within the city of Bossier City?

A. Well, there are two, basically, Black communities, within the city, wherein, you probably could, if you could get away from this precinct business, you could come up with some kind of district, Black district. Old Bossier, and Northgate, as I call it.

Q. Yes.

A. Northgate is this over here by Barksdale, on the North end of Barksdale, and that is where a person, who—

Q. Excuse me. Could you show me where old Bossier is on that map?

A. Down in here.

Q. Let the record reflect that the witness is pointing to the left central portion of the City of Bossier.

A. And it would make a lot of sense because you have Butler, and Bossier, Bossier Elementary,

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Excerpts from Government Exhibit 100 (Designations of portions of Deposition of School Board Member Michelle Rodgers dated September 30, 1994)

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Q. Where is the black population in Bossier Parish?

A. Well, there is quite a bit around Plain Dealing. There is quite a bit in my district.

Q. Where, specifically, in your district?

A. In the area around Butler Elementary. And Bossier Elementary.

Q. Could you describe that in terms of the city?

A. In terms of the city, Scott Street, Green Street, those areas of Old Bossier.

Q. So, Old Bossier is in your district?

A. Yes. There is another large area of blacks in [15] Ms. Sullivan's district. They refer to that as Jack's quarters.

Q. That is in the city of Bossier?

A. Yes.

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[100]

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Q. Why is it that the Bossier Parish school district has predominantly black schools? Why is it that the Bossier Parish school district has predominantly black schools?

A. I can only think of two in the parish that would be predominantly black.

Q. What are those?

A. Butler Elementary, which is in my district. And probably Plain Dealing would be predominantly black.

Q. Why are those schools predominantly black?

A. I would assume that Plain Dealing, well, first of all, Plain Dealing has a private school, Plain Dealing Academy and a lot of kids in that area go to that private school. There are also a lot of black people who live in that area. Mr. Myrick could better answer that since he is more familiar with the Plain Dealing area.

Butler Elementary is in the opposite section of my district. I do not live very close to there, but there are black neighborhoods [101] surrounding that school.

Q. Why is Bossier Elementary a predominantly black school?

A. Well, it is geographically very close to Butler Elementary.

Q. Why is Plantation Park Elementary School a predominantly black School?

A. There is a housing project down the street from Plantation Park, which I believe is predominantly black.

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Excerpts from Government Exhibit 101 (Designations of portions of Deposition of School Board Member Ruth Sullivan dated September 29, 1994)

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Q. Why do you still have predominantly black schools in the Bossier Parish school district?

A. One is because Butler, when we tried to move, get an equal, move those kids from Butler, the people rose up in arms and said, "We want our neighborhood school," and we did everything that we could to make sure that they had their neighborhood school. And, Butler is one of our predominantly black schools.

Q. Butler is in a black neighborhood, that is why it is a predominantly black school?

A. Yes.

Q. What about Bossier Elementary School?

A. Same difference.

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Excerpts from Government Exhibit 102 (Direct Testimony of former School Board Member Jerome Blunt dated April 10, 1995)

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5. I wanted to serve on the school board for the same reasons that I served on other policy making bodies. I was concerned as a parent about what my children were being taught. I enjoy being on the policy making end of things and felt that with my background as a parent and my work in special education, I could make a significant contribution to the school district.

6. I also felt that it was important to have minority representation on the school board. Blacks in Bossier Parish do not feel a part of the school system. They feel that, because they do not have representation on the board, they do not have a voice in the decision making and that they are unable to bring about change in the school system. Minority groups, such as the NAACP and the Bossier Concerned Citizens Association, have worked [4] together and presented their issues as a coalition in an attempt to bring to the attention of the school board that the concerns of the black community are not isolated incidents, but real concerns of blacks throughout the parish. The black community's feelings that the school board does not take their concerns seriously are justified because the school board has not been responsive to the concerns raised by the coalition. The most recent example of this lack of responsiveness

that I can think of is the board's reluctance to provide the minority coalition with information they had requested relating to the disparities in graduation rates or suspension and expulsion rates between white students and black students. Some of the members of the board are convinced that Mr. Price, president of the local chapter of the NAACP and spokesperson for the minority coalition, is only interested in information like this so that he can use it against the school board. Because of this attitude, they miss the fact that the members of the minority coalition are genuinely interested and concerned about our young people and request information like this so that they can better understand the problems facing our black school children. They wish to work with the school system to develop policies aimed at addressing the needs of black students.

7. I also wanted to be on the school board because I believe that it is important for our young people to see minorities elected to public office or in positions of influence in the community to serve as role models. It is for this reason [5] that I had hoped, as a member of the school board, to be able to improve the school district's policies on the recruitment and hiring of black teachers. I do not believe that it is just lower salaries that keep black teachers from accepting positions in our school system. The board's current policies do not do enough to point out that the Bossier Parish school system has a lot to offer black teachers who are interested in really making a difference in the world.

8. I took the oath of office as a school board member on September 17, 1992, at the end of the board's redistricting process. At the same meeting, the

NAACP presented, for a second time, a map of a redistricting plan for the Bossier Parish School Board that created two black-majority districts. The board did not take the NAACP plan seriously and never gave the plan any serious attention. School board member Boyce Hensley called the plan "ridiculous." School board member Ruth Sullivan, in response to the idea of creating black-majority districts to provide an opportunity for elected black representation on the board, remarked that she could represent blacks as well as a black could.

9. It was my impression, by the time I took office, that the members of the board had already decided informally to adopt the police jury plan, which had no black-majority districts. In fact, at the September 17, 1992 school board meeting, the board passed a motion of intent to adopt the police jury plan and adopted the plan at the next board meeting on October 1, 1992.

[6]

10. In between the September 17 and the October 1 meetings of the school board, I participated in discussions with other school board members regarding the merits of the police jury plan and the NAACP plan. In particular, I recall a discussion at the September 24, 1992, public hearing on the plan about the opposition to the police jury plan presented by Mr. George Price on behalf of the minority coalition. Mr. Price stated that he had consulted with the national chapter of the NAACP and that their lawyers agreed that the police jury plan violated the Voting Rights Act because it did not fairly represent minority voting strength. Price further stated that the board's concerns about the

splitting of precincts in violation of state law was superseded by the necessity to comply with federal law. I thought that Mr. Price's presentation raised some concerns that the board needed to address, but there was no further discussion about adopting a plan that was more fair to blacks. I was surprised that some of the board members like Barry Musgrove and Tom Myrick, who had earlier expressed concern about adopting a redistricting plan that met with the approval of the Justice Department, were so willing to ignore the issues raised by the local and national chapters of the NAACP. In fact, I would say that Tom Myrick was one of the most vocal supporters of the school board adopting the police jury plan.

11. To my knowledge, the school board never asked Mr. Joiner about attempting to come up with a plan of his own that might facilitate black representation on the board.

[7]

12. I abstained from voting on adopting the police jury plan at the October 1, 1992 school board meeting. I felt the police jury plan was not fair to blacks and that by abstaining I would draw more attention to this fact. I made a statement before the final vote on the plan. While I do not recall the exact words I said, the intent of my statement was to make a plea to the board to listen to and to work more closely with the minority coalition in an effort to make the minority community feel more a part of the system. I recall that I also voiced my concern about the lack of minority representation on the school board and that the police jury plan would do nothing to change that. There was no

response from any of the school board members to my statement.

13. I recall that Mr. Price appeared before the school board on a few other occasions after the police jury plan had been adopted to appeal to the board to change their minds. The school board, however, considered reapportionment "a done deal" and were not interested in pursing this matter any further.

14. No single issue that I can recall created more bitter feelings between the black and white communities than the school board's sudden disbandment of the Bi-Racial Committee in early 1993. The Committee was re-established at the request of the minority coalition to respond to their repeated requests that the school board address certain issues, such as the hiring of more black teachers. It is my understanding that a bi-racial committee was required as a part of the lawsuit brought in the [8] 1960s to integrate the school system, but that such a committee had never really been established.

15. The black community saw the establishment of the Bi-Racial Committee as a victory and an opportunity to have real input into the policy making of the school system. The committee met only once that I recall, however, before the board decided to disband it. I was not privy to the discussions by members of the school board to disband the committee. I was later told by school board member Barry Musgrove and Mr. Lewis, the Superintendent of Schools, that the reason the board disbanded the committee was because an influential white person in the community had threatened to sue the school board if they formed a committee to

address concerns of the black community and did not have a similar committee to address the concerns of the white community.

16. On April 3, 1993, I ran unsuccessfully to retain my seat on the school board in a special election. My opponent was Juanita Jackson. I ran a positive campaign based on my credentials and my brief record as a school board member. I actively campaigned and financed the campaign myself, with some financial assistance from a few individuals. I believe that I lost the election because the district I ran in, District K, was predominately white. I had a conversation with school board member Barry Musgrove during my campaign in which he stated that he felt that I would have a tough time getting elected. I took that to mean that he was acknowledging that a lot of the white [9] residents of the district, particularly in South Bossier, would not vote for me because I am black.

17. I was present in the courtroom on April 10, 1995, during the plaintiff's presentation of its case. In response to certain testimony offered by witnesses for the school board, I have the following supplemental testimony. During the time I was a member of the Bossier Parish School Board, I do not recall any member of the Bossier Parish School Board refer to the NAACP plan as a racial gerrymander. I do not recall any discussion to the effect that the NAACP plan split too many precincts and therefore would increase costs to conduct elections.

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Excerpts from Government Exhibit 104 (Direct Testimony of former Bossier City Council Member Jeff Darby dated December 8, 1994)

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8. In 1989, I ran for the Bossier City Council in District 2 and became the first black ever elected to that body. In the primary, I ran against Anthony Provenza, the incumbent and another white challenger, Don Brown. I came in second, behind [4] Brown, thus eliminating the incumbent. Mr. Provenza, although he had served on the city council for 12 years, had fallen out of favor with the residents of his district. There was also a question raised during the campaign regarding whether or not he had moved and no longer resided in the district. I eventually won the run-off election by 36 votes.

9. I campaigned hard in my election to the Bossier City Council, and I had good name recognition in the district. I had grown up in this area and gone to school with many of the residents or with their children. Also, District 2 encompassed a lot of the same area included in Police Jury District 10, where my brother, Jerome, was serving as the Police Juror. District 2 also bordered the Barksdale Air Force Base and many of the residents of the district, in neighborhoods like Pecan Park, were not born and raised in Bossier Parish but rather came here to live because of the base. Unlike a lot of the white natives of Bossier Parish, for

many of these residents, my race was not an obstacle to them looking at my credentials and seeing that I was more qualified to represent them than my opponent. I believe that the fact that they had worked side-by-side with blacks on the base had a lot to do with why my race was not a barrier for them. I believe that it was this unique composition of white residents that allowed me to gain enough white votes to win. I do not believe that I could accomplish this in any other area of Bossier City or Bossier Parish.

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17. I ran for reelection under the new plan in October, 1993, against a white challenger, James Sawyer. Despite the fact that I campaigned as hard as I had in the past, I lost the election by 58 votes. I believe I lost the election because I lost my base of support in the redistricting. I also had in my new district a white area of "Old Bossier" that is the least integrated in the city. The voters from that area would not be likely to vote for a black candidate.

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Excerpts from Government Exhibit 105 (Direct Testimony of Bossier Parish Police Juror Jerome Darby dated April 4, 1995)

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19. I am in my third term as Police Juror. In my first election in 1983, I ran against the black incumbent in district 10 and a white challenger in the primary. The incumbent lost, and I ran against the white candidate in the run-off. One of the reasons the incumbent (who had been in office for only one term) lost was because there was some concern raised that he did [12] not even live in the district. The white challenger didn't campaign at all, assuming that he would just win because it was a white majority district. I campaigned hard and won by a narrow margin. Counsel for the United States informs me that it has been stipulated to by the parties that my district was 37.9 percent black at the time of this election.

20. Another major reason for my election is the unique nature of my district at that time. My district includes the area in and around Barksdale Air Force Base. There are a lot of military personnel there who do not vote, so that the percentage of voters who are black is actually higher in my district than one would think based on the black total population percentage. Also, many of the whites who do vote in the district are military retirees who are from outside the parish, from all parts of the country, and who are more likely to be

open-minded about voting for a black candidate than local white residents in the rest of the districts. A number of the military persons' children went to school with me in the area, and knew of me and my brother Jeff. Without the military base in my district, I would not have been able to win. Accordingly, I do not think I could win in a parishwide race, or in a white majority district elsewhere in the parish, because of voting along racial lines.

21. In my election in 1987, I ran as an incumbent against the same two individuals and won in the primary. In the 1991 election, I ran under the 1991 Police Jury plan, but was unopposed.

[13] 22. I was on the Police Jury in 1991 when the Jury redistricted. I attended most of the meetings at which redistricting was discussed. I was angered at the beginning of the redistricting process. I was assured that they would make a special effort to include minority input, but at first I was excluded from the Reapportionment Committee, and was only included after I publicly complained of being shut out of the process. I was the only Police Juror to have attended the reapportionment seminar that had previously been held in Monroe, Louisiana—the same seminar that Gary Joiner had attended—so my initial exclusion from the Committee was particularly surprising.

23. Even after they put me on the Committee, I really didn't have much to do with how the lines got drawn. Other parish officials were more directly involved. These included Parish Administrator James Ramsey, and Jurors Pete Glorioso, Mark Montgomery, Bob Burford, Tommy Scarborough, Mark Montgomery,

and Wayne Hammack. Glorioso in particular is a major player. He is directly involved in all important issues. He has for years been Bossier City's Director of Public Works, which gives him great political contacts and political clout. The Jury hired Gary Joiner as a consultant to draw the plan. I met with Joiner in his office. He told me that most of the other Jurors had already met with him. By the time I met with him, he had already drawn up the plan. He showed me what my district would look like under his plan. He told me that this was the best possible district he could draw for me. He told me that Tommy Scarborough's district [14] and Pete Glorioso's district could elect blacks ten years from now, so there was a potential for having three blacks on the Police Jury in the future. He also told me that it was impossible to draw a black-majority district because the black population was too scattered, and that any plan he drew would be rejected by the Department of Justice. I don't remember ever hearing any discussion that drawing black districts would create too many precincts.

24. I voted for the 1991 Police Jury plan because I was led to believe by Mr. Joiner and the other Police Jurors that it was impossible to create a black-majority district that would be precleared by the Department of Justice. That was my understanding at the time of the 1990-1991 redistricting process, and also while the Department of Justice was reviewing the Police Jury plan. After this lawsuit started, during the summer of 1994, I was shown maps of the alternative redistricting plans called the "NAACP Plan" and the "Cooper plan." From these maps I realize that it *is* possible to draw two reasonably compact black-majority districts. Once I was shown that, I changed my mind. I now believe

that I was deliberately misled in this regard during the 1990-1991 redistricting process. If I had known then what I know now, I would have voted against the Police Jury plan. Based on my knowledge of the Police Jury, the racial politics of Bossier Parish, my involvement in the redistricting process at the time, and the way in which I was misled, I believe the Police Jury adopted the plan it did because it wanted to avoid drawing [15] any districts with a black majority. Drawing a black majority district was never considered at all, and the Jurors never had the slightest intention of trying to do anything to do right by blacks. All the Police Jurors cared about was protecting their own districts—incumbency drove everything.

25. The School Board members generally took an interest in the Police Jury's redistricting, because the School Board might end up with the same or a similar plan. In fact, in 1990 the School Board approached the Police Jury about doing a joint redistricting, but the Police Jury said no. I remember James Ramsey, then the Parish Administrator, telling the Jury that he and School Superintendent Lewis had been in contact on this idea. The Police Jurors who really made the decisions, like Pete Glorioso and Bob Burford, had contact with the School Board. Glorioso has been around so long, has so much clout and connections, that the School Board would naturally consult with him, directly or through mutual acquaintance as part of the normal give-and-take of the Bossier Parish politics. Burford has extensive connections to the School Board. He has been an employee of the School Board for about 30 years as a teacher, and more recently as a professor for a college run by the School Board. He has gone to the School Board on a number of occasions to represent

the Police Jury. Burford is also close friends with School Board members. His close friend, David Harvey, who for years has lived 5 houses away from Burford, was President of the School Board around this time. Based on my knowledge and [16] experience in Bossier Parish politics, I would say that Bossier Parish School Board members would have been aware of the Police Jury's redistricting process, the decision it finally reached, and the reasons for that decision.

26. I was misled in one other way as well. I have discovered that the district I'm in under the 1991 Police Jury plan is not as good for me as I was told. I do not believe that I can win in my current district. When they drew the new plan, they put in more whites from a conservative area. I was told by Joiner at the time that these were people I could do well with as far as getting their support. I now think they probably will not support me. The 1991 [sic] election for Bossier City Council suggests this, because the voters in that area did not vote for my brother, who lost his reelection effort. They also put in a black area in my district, and I was told by Joiner that this was helpful to me as well, but I have since discovered that this is a poor area and the black residents there are largely unregistered. At the time, Joiner told me that he had to make the particular changes he made or it would not pass Justice, because my district had declined in black population since the last redistricting. Even though the changes to my district may have involved moving some blacks in, it still hurts me, not helps me, because the blacks they moved in vote at lower rates than the whites they have moved in.

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Excerpts from Government Exhibit 106
(Direct Testimony of S.P. Davis)

[submitted on Mar. 1, 1995]

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1. I reside at 2129 North Cross Drive, Shreveport, Louisiana 71107. I have lived at this address for four years. I am an attorney and have practiced law for 20 years. I am currently the sole owner of the Davis Law Office, 4050 Linwood Avenue, Shreveport, Louisiana. I graduated from Southern University Law School in Baton Rouge, Louisiana. I also hold the rank of Lt. Colonel in the Army Reserves. I am the Battalion Commander of an Infantry Battalion stationed in Bossier City, Louisiana. I am married and have three children. My wife is an elementary teacher at the T.L. Rhodes Elementary School in the Bossier Parish School District. My oldest son is 24 years old and attended schools in the Bossier Parish School System for 12 [2] years. My daughter is 14 years old and attended Princeton Middle School in the Bossier Parish School System. She currently attends Bird High School in Caddo Parish. My youngest son is in the 5th grade at Platt Elementary School in the Bossier Parish School System.

2. I was raised in Bolinger, Louisiana, a small community located north of Plain Dealing in Bossier Parish, Louisiana. I attended the segregated school system in Bossier Parish. I graduated from the all-black Carrie Martin High School, which is now an elementary school. I still have family in Bossier Parish.

3. I am the attorney of record for the plaintiff-intervenors, the Bossier Citizenship Education Program, Inc. ("BCEP") in *Lemon* v. *Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.) and have represented the BCEP since they sought intervenor status on February 12, 1976, which was granted on March 2, 1976.[1] The *Lemon* case was originally commenced on December 2, 1964, when black plaintiffs brought suit under 42 U.S.C. 1983 to desegregate the public schools of Bossier Parish. The school board was subsequently found liable for intentionally segregating the public schools in Bossier Parish in violation of the Fourteenth Amendment to the United States Constitution. *Lemon* v. *Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965). From 1965-70, the parties were engaged in protracted litigation in which the Bossier Parish School Board strongly [3] resisted the desegregation of its schools, advancing one inadequate remedial plan after another, including three plans that were rejected by the Fifth Circuit Court of Appeals. On January 20, 1970, the current desegregation plan was approved by the *Lemon* court. The school district has never been declared unitary and that decree, with some modifications over the years, remains in effect today.

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[1] The United States was granted intervenor status as a plaintiff on April 3, 1965.

22. The low number of black administrators, principals, and teachers in the school district and the fact that the school board has systematically shut out the black community from the policy and decision making aspects of the school system have adversely affected the black students in the Bossier Parish schools. These factors combine to create an atmosphere of racial hostility in the schools and result in black students having higher drop-outs rates because they do not receive the same encouragement to excel as the white students. This is particularly true in the schools with student populations that are more than 80 percent white with corresponding faculties that are more than 80 percent white. Black students have higher suspension and expulsion rates than the white students in these schools. Black students are also less involved in extracurricular activities, such as cheerleading and dancelines, where the selection for these activities is done by the white [12] teachers. Years of having predominantly, if not exclusively, white squads in these activities has lowered the spirit and self-esteem of the black students, who no longer feel it is even worth-competing because they will not be selected based solely on their race. A recent example at Haughton High School demonstrates that the school board's faculty hiring practices and attitude toward black students have perpetuated an atmosphere of racial hostility in the schools and in the community. In January, 1993, black students at Haughton High School protested the election by the student body of an all-white Winter Court, an event that takes place during basketball season. After the students' protest, the school administration took steps to include black students on the court. This effort fueled the long-standing racial tensions in the school and community.

Threats of violence resulted in the school administration cancelling the Winter Court events.

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[16]

[additional material below submitted in supplemental testimony on Apr. 9, 1995]

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30. As I said earlier, I was raised in the Plain Dealing area of Bossier Parish and remain in touch with this area through familial and professional ties. It is my understanding from counsel for the United States that the school board has asserted in the instant case that a community of interest does not exist among the black people who would reside in an election district that would include the areas of Plain Dealing, Benton and Princeton. I disagree with that assertion. While the black communities in these areas reside in different towns, they are united in their quest for an end to racial discrimination in Bossier Parish. That unity is clearly demonstrated in their continued struggle against the school board to eliminate, to the extent practicable, the vestiges of racial segregation. The opportunity to elect members to the school board who would [17] represent their views would certainly enhance the possibility that one day the children in the Bossier Parish Schools will be able to exercise their constitutional right to attend a system of schools that is unitary.

31. I personally know only one of the Bossier Parish School Board members, Mr. Henry Burns. I know Mr. Burns because we serve together in the Army

Reserves. I have spoken with Mr. Burns on several occasions regarding school board matters that concern black students and the black community. Mr. Burns told me that while he personally favors having black representation on the board, other school board members oppose that idea. Nevertheless, to my knowledge, Mr. Burns has never taken a public stand on this issue. Mr. Burns and I have also discussed other issues such as black teacher recruitment and hiring, and the lack of opportunity for black students to participate in extracurricular activities sponsored by the school district.

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Excerpts from Government Exhibit 108 (Direct Testimony of former Bossier Parish Police Juror Johnny Gipson dated December 8, 1994)

[1]

* * * * *

2. I have always had an interest in civic affairs and have been involved in the local politics of Bossier Parish since at least 1979. One of the reasons for my involvement in local politics is that I believe that the all-white governing bodies of [2] Bossier Parish have long neglected the needs and concerns of the black community in such areas as employment and education. I have been a member of the Bossier Parish chapter of the NAACP for three or four years.

3. I first ran for political office in early 1979 when I ran for the city council of Bossier City from District 2. I lost that election by 15 votes to Anthony Provenza, a white candidate. I have been told by counsel for the Department of Justice that, according to the Department's records, the district was 34 percent black in total population as of the 1980 Census. I believe that I lost that election because blacks did not constitute a majority of the district.

4. Later in 1979, I ran for the Bossier Parish Police Jury from District 10 against Thomas McDaniel, the white incumbent. I won that election by 86 votes. I was the first black ever elected to the police jury. I felt I had a chance of winning in this district, despite the fact that blacks did not constitute a majority of the population, in part because the Barksdale Air Force

Base and the residential area around it was located in the district. Most of the residents of the base did not vote in Bossier Parish elections, thus increasing the black percentage of the voters in the district. I also knew that I would need to garner some white votes, and I enlisted the aid of a few of my white friends, particularly David Broussard, who was active in the Jaycees. Mr. Broussard was not a native of Bossier Parish, having moved to Bossier Parish from Texas. Mr. Broussard [3] actively campaigned for me on a theme that it was time for black representation in Bossier Parish and was influential in my ability to garner some white votes, particularly among the retired military population or civilians employed at the base who lived in the district. These people who were not originally from Bossier Parish and had experience working with blacks as peers on the base. I felt that, unlike the lifetime white residents of Bossier Parish, these people were more likely to look beyond race and at the fact that I was more educated and capable of representing them than my white opponent, Thomas McDaniel. I do not believe that I would have won this election if not for these special circumstances because it is well known that white lifetime residents of Bossier Parish in general would not then and will not now vote for black candidates, based purely on the color of their skin.

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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

Civil Action No. 94-01495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, *PLAINTIFF*,

v.

JANET RENO, *PLAINTIFF*,

v.

GEORGE PRICE, ET AL., *DEFENDANT-INTERVENORS*

DECLARATION OF DR. GEORGE CASTILLE

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I. INTRODUCTION

A. Qualifications and Experience

1. My name is George J. Castille, III, and I make this declaration pursuant to 28 U.S.C. 1746.

2. I received my Ph.D. in Geography at Louisiana State University in 1993. I teach Louisiana Geography at LSU and work full time as an independent consultant. Other teaching experience includes a course entitled "Old New Orleans and the Cajun Country" which was offered for continuing education credit for teachers, and I have also taught several introductory Geography and Anthropology courses. Over the past 10 years I have worked on about 12 to 15 projects involving disputes over boundaries or property ownership in south Louisiana. I gave expert witness depositions in two boundary dispute lawsuits, *Summersgill Dardar, et al. vs. Lafourche Realty Co. Inc.*, (E.D. La.) and *Hankamer et al. vs. Angelina Hardwood Lumber Co, et al.* (14th Judicial District Court, Calcasieu Parish). The expert witness testimony included interpretation of General Land Office Records, historic maps, and historical documents related to local and regional commerce. My Ph.D. research involved the analysis of Louisiana Supreme Court decisions related to the ownership of waterbottoms. This analysis explored the implications for changes in boundaries along the land/water interface as waterbodies are modified by natural means (see attached vita).

3. More recently, I co authored an expert witness report for *Ray Hays et al., vs. State of Louisiana, et al.*

(W.D. La.), a case challenging the congressional districting plan for Louisiana on the grounds discussed in the Supreme Court decision in *Shaw* v. *Reno*. For the *Hays* case I conducted a geographical analysis of twentieth century congressional districts in Louisiana. I compared the State's plan to prior Louisiana congressional plans and alternative plans proffered by the plaintiffs.

4. I have been retained by the United States to evaluate and compare the district boundaries of various Bossier Parish redistricting plans as to the extent the district boundaries follow such commonly used features as roads, streams, railroads, and corporate limits, and to analyze these plans from the perspective of such traditional redistricting principles as compactness and unifying communities of interest. I am being paid at the rate of $50.00 per hour.

B. Methodology and Data Collection

5. I have used available maps of Bossier Parish to compare the proposed 1992 School Board Plan, the NAACP Alternative Plan, and a second alternative plan developed by William S. Cooper, the redistricting expert employed by the defendant-intervenors in this case. Maps that were used to aid in the interpretation included Census maps, maps of prior redistricting plans in Bossier Parish, historical maps on file in the archives at the LSU Shreveport library, USGS topographic maps (scales 1:100,000, 1:62,500, and 1:24,000), maps produced by the computer-run geographic information systems (GIS maps) of both the United States and William S. Cooper, and road maps published by the

Louisiana Department of Transportation and Development.

6. I also conducted a field investigation to examine the layout of the parish in detail and to determine the physical character of the boundary lines involved. During this field investigation, all major communities were visited and various roads were traversed from the Arkansas state line down to the southern end of the parish at the mouth of Loggy Bayou. During this trip, observations were made as to the physical terrain, natural vegetation, obvious economic activities, settlement patterns, and concentrations of population. Such a field investigation is not necessary for a comparison of redistricting plans, which primarily involves the analysis of maps. In this case, however, the field investigation gave me a better picture of the specific sites on the maps which I analyzed, as well as a ground-level overview of the parish.

II. BACKGROUND AND HISTORICAL SETTING

7. A map of Bossier Parish is provided in Figure 1. Historically, the parish has changed from being primarily agricultural in character to being driven by commerce and industry. This change has driven population and migration trends, particularly with respect to blacks. In the decades after the Civil War, some black residents left the floodplain plantations for the far less agriculturally rich hill country and terraces. Those who remained on the floodplain plantation worked as sharecroppers, and the sharecropper system survived until the middle of the twentieth century. By the 1960s, most blacks had abandoned the floodplain plantations and had become concentrated in urban areas and the hill region. The limited economic

potential of tenant farming and sharecropping was one reason why many blacks moved to the parish's cities and why others left the parish for the Northern states. This migration to the north and to urban areas began immediately after the Civil War and peaked during the 1930s and 1940s, accelerated by the Great Depression. (U.S. Census various years, Aiken 1978, Prunty 1955, Lewis 1987). The black out-migration from Bossier Parish continued through at least 1970, substantially reducing the black percentage within the parish. Specifically, the parishwide black percentage dropped from roughly 70% in 1890 to the roughly 20% level seen in 1990.

8. With the recent urban growth associated with the Shreveport-Bossier City metropolitan area, Bossier Parish is becoming increasingly urban in character. The present trend appears to be a continuation of the movement of African Americans from both the floodplain and hill regions to urban areas within Bossier Parish. Bossier City contains the largest concentration of African Americans; over half of the parish's black population lives in Bossier City. The black population within Bossier City is largely concentrated in only a few sections of the city, and the numbers are small compared to the city's white population. The black percentages are higher in the towns of Plain Dealing and Benton. Outside of urban areas, the greatest concentration of African American population in Bossier Parish now is still found in those hill and terrace regions, where soils provide the least agricultural (and therefore economic) potential.

III. COMPARING THE PROPOSED PLAN AND TWO ALTERNATIVES

A. Overview

9. The 1992 School Board Plan uses roads, streams, railroads, and corporate limits as boundary features. The plan relies heavily on roads and corporate limits, which in some cases causes splits of communities of interest–including, in several cases, black communities. The NAACP Plan avoids this fragmentation of communities by relying less on roads and corporate limits as boundaries, and more on streams. Overall, however, in terms of the use of logical, traditional boundary markers, the NAACP Plan is not significantly different from the 1992 School Board Plan. Many of the curves in the rural, northern-parish minority district in the NAACP Plan are due to the use of natural boundaries such as streams. The Cooper Plan is similar to the NAACP Plan, except that the northern-parish minority district is more compact. Both plans demonstrate that two reasonably compact black-majority districts can be drawn in Bossier Parish for the Bossier Parish School Board. From the standpoint of adherence to traditional redistricting principles, the two alternative plans are no worse, and in some respects better, than the proposed plan.

B. Defining Boundaries

10. Boundaries associated with early settlement often correlated with physical features such as streams, lakes and ridges. However, the trend in post-colonial United States has been that of assigning boundaries based on artificial or man-made phenomena such as

orientations of the compass, straight lines drawn between two landmarks, or roads.

11. As with other parishes, Bossier Parish has been subdivided into election districts that correspond to voting areas for Police Jury members, School Board members, or for other elected offices. Generally the district boundaries follow four common features: streams, roads, railroads and corporate limits. In cases where no physical or man-made feature exists, boundaries sometimes follow arbitrary lines that are related to property boundaries.

12. While common, the use of corporate limit lines as district boundaries can be problematic. Corporate lines are frequently drawn in an arbitrary manner. The arbitrariness can stem from an extension of corporate limits well beyond the area of present occupation in an effort to provide room for urban growth. Corporate lines are also a problem when they are not revised, or are revised only infrequently, to accommodate urban growth outside the corporate limits. Either boundary phenomenon can result in the splitting of communities of interest.

C. The proposed 1992 Bossier Parish School Board Plan

13. As with previous districting plans, the 1992 Bossier Parish School Board Plan (Figures 2-A, 2-B) follows common boundary delimitation practices. District outlines follow typical boundary markers for parish subdivisions. As noted above, the more common district delimiters are roads, streams, railroads, and corporate limit lines. Several more unusual district

boundaries include the limits of Barksdale Air Force Base and a division line that runs through the middle of the Air Force base.

14. A few other boundary anomalies were also observed. One example is the unusually shaped boundary along Highway 71 in south Bossier City (Figure 3, blue shading), where a long finger of land from District 12 extends into District 1, ending in a triangular head (Figure 3, Location A). This projection follows an odd-shaped corporate boundary for Bossier City (Figure 3, yellow shading). The Highway 71 anomaly may reflect both an attempt to exclude a stockyard (Figure 3, Location C) from the corporate limits while expanding the limits to include a new subdivision and trailer park (Figure 3, Location B).

15. In another instance, the Benton corporate limits serve as a district boundary, but this particular boundary fragments neighborhoods with economic and racial commonalities. The community of Benton has expanded outside the corporate limits in several areas, and until the corporate limits are revised to include those areas of expansion, the corporate limits will continue to fragment those black neighborhoods that straddle the corporate line. By following the corporate limits, the School Board Plan's district boundary reinforces the fragmentation of some black neighborhoods, splitting them between Districts 3 and 4. One cluster of black families lives along Shaffers Road along the east side of Benton (Figure 4, Location A), and the large black subdivision of East Benton lies along Highway 162 just north of the Benton Community Club Cemetery (Figure 4, Location B). Another group of black residents is located immediately north of Benton

corporate limits at the end of Second Street (Figure 4, Location C). The case of Benton illustrates how strict adherence to the legal corporate limits can exclude neighborhoods from the voting area of the social and cultural community as a whole–in this case, the black community. The NAACP and Cooper Plans avoid this fragmentation.[1]

16. As in Benton, the district boundary lines within Bossier City have effectively divided well-established neighborhoods that are predominantly black. For example, the area bounded by Shaver, Beckett, Fuller and McArthur Streets (Figure 6, green shading) is included within District 8 when it easily could have been placed within District 7, located immediately to the west. Culturally, this black neighborhood is more likely tied to the black residential area immediately to

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[1] While not directly related to the boundaries in the 1992 School Board Plan, the corporate limits of Plain Dealing, as they existed during the 1970s and 1980s, provide another recent example of a Bossier Parish community in which relatively large, predominantly black subdivisions lie immediately outside of the official limits of a community. In the case of Plain Dealing, the corporate limits were extended 1/2 mile to the southwest along a rural highway to incorporate a single white residence (Figure 5, Location A). (That extension was deannexed in recent years, at the request of the sole white resident included.) If the corporate limits were extended *less* than 1/2 mile to the west, then the official community could incorporate DeMoss Hill subdivision, a predominantly black neighborhood of over 50 homes and two churches (Figure 5, Location B). Another even larger black subdivision, known as Carstarphen Heights, is located immediately south of the corporate limit (Figure 5, Location C). Of course, none of the redistricting plans which I examined have boundaries which follow the Plain Dealing corporate limits; Figure 5 merely illustrates another example of "underbounding" within Bossier Parish.

the west (Figure 6, Location D) than to the heavy commercial strip (Figure 6, pink shading) located along the four-lane Highway 3 (Benton Road) immediately to the east. By setting the boundary along the railroad, the School Board Plan has cut off this neighborhood from the larger community, thus separating approximately 35 houses. Under the School Board's Plan, then, a railroad serves as the arbitrary boundary between two districts, splitting a black community. A nearby road could just as easily have been selected as the boundary, and the larger neighborhood could have remained intact. This is a clear example where a black neighborhood is fragmented by district boundaries. This fragmentation is avoided in the NAACP and Cooper Plans.

C. The NAACP Alternative Plan

17. The NAACP Plan was generated from the 1990 Census database (1992 TIGER/Line Files) using a redistricting computer. The minimum unit of measure was the Census block. Census block boundaries, as designed by the Census Bureau, correspond to visible natural or man-made features.

18. The NAACP plan demonstrates that two reasonably compact districts could be drawn which encompass the significant black population concentrations that exist in Bossier Parish, one is Bossier City (Figure 7-B) and one in the northern central, more rural region of the parish (Figure 7-A). This results in two majority-black districts. District 2 begins in the extreme northwestern corner of the parish and follows the Red River south, extending to the community of Princeton in the north-central part of the parish (Figure 7-A). District 1

is "C"-shaped and is located entirely within the heavily urbanized portion of Bossier city (Figure 7-B).

19. The NAACP alternative plan creates district boundaries that are significantly different from the boundaries of the proposed 1992 School Board Plan. Nevertheless, the alternative boundaries generally follow the same types of natural and man-made features as in the School Board Plan. The boundaries of the NAACP alternative correspond primarily to existing roads and streams, and utilize streams to a greater extent that the School Board Plan. The alternative plan also utilizes railroads, existing district lines, the limits of Barksdale Air Force Base, corporate limits of various communities, an electrical high power line, several rural unimproved roads, and parish ward boundaries. All of these types of boundaries of course reflect visible local features that outline the census blocks. Overall, in the use of logical features such as roads, streams, etc., as boundary markers, the NAACP Alternative Plan is not significantly different from the proposed plan.

20. Stream boundary correlations were noted in at least 14 locations as opposed to 6 in the School Board Plan. While some of the districts in the alternative plan are more elongated than districts of the proposed School Board Plan, this is due to the greater use of streams as boundaries. The more extensive utilization of streams as boundaries is a positive factor. As discussed above, the use of roads in the School Board Plan has in some cases resulted in the fragmenting of communities of interest. This is not the case with the use of streams as boundaries in the alternative plan. Roads in Bossier Parish are used for transportation

today far more than streams, and thus tend to attract settlements along both sides of the road. Conversely, communities of interest straddle streams in Bossier Parish to a much lesser extent, and using streams as boundaries is less problematic.

21. The "fingers" or small projections along the east side of District 2 immediately southeast of Plain Dealing are simply reflections of Census block boundaries that follow stream courses (Figure 7-A, Location A). Irregular-shaped Census blocks, and therefore irregular-shaped district boundaries, are much more likely to occur in rural parishes with hilly terrain such as Bossier Parish than in relatively flat areas such as in the southwestern part of Louisiana.

22. Slightly irregular-shaped boundaries also occur in District 2 immediately north of Plain Dealing (Figure 7-A, Location B), within the Bodcau Wildlife Management Area in the east central part of the parish (Location C), and in the areas immediately north and east of the Black Bayou Reservoir (Locations D and E). These irregular shapes represent boundaries that follow local stream patterns and rural roads.

23. The NAACP alternative plan also differs from the School Board Plan in that, unlike the School Board Plan, district lines divide the corporate limits of Benton, Haughton and Plain Dealing. However, the strict adherence to corporate lines can exclude some subdivisions that are immediately outside the corporate limits but should be considered as part of the suburban core of these communities. As noted previously, examples of excluded suburban development were found through a field and map investigation of the

community of Benton (Figure 4). The NAACP and Cooper Plans avoid this division of areas with a community of interest.

24. Another way in which the alternative plan differs from the proposed plan is in the use of unimproved roads and a powerline as boundaries. While not evident on some parish maps, such features are easily recognizable on USGS topographic quadrangle maps and are of course readily identifiable to people living in the vicinity.

25. The NAACP plan demonstrates that Census blocks can be grouped in such a way that predominantly black districts are created. To create such districts it may be necessary to disregard some of the established official boundaries, such as corporate limits, particularly if those boundaries do not reflect cultural changes that are visible geographically. In the use of logical features such as roads, streams, etc., as boundary markers, the NAACP's Alternative is not significantly different from the proposed plan. It contrasts with the School Board Plan in that it emphasizes the cultural or social element (ie. where people actually live) rather than the strict adherence to arbitrary boundaries that in many ways are not reflective of the cultural conditions that exist today. It is important to realize that boundaries are not only a means of defining an area; boundaries are also a means of exclusion from an area.

D. The Cooper Alternative District 8

26. The final district plan examined in this study is one prepared by William Cooper (Figure 8). The Cooper plan creates a northern parish district that is at

least 55 percent black in voting age population. The general shape and location of District 8 of the Cooper plan is similar to District 2 of the NAACP alternative, but District 8 in the Cooper plan is a little shorter and more compact. With the exception of seven boundary segments, the delimitation of District 8 matches boundary features discussed in either the School Board Plan or the NAACP plan. These seven new boundary segments include roads, streams, and an unimproved road. All of these of course, follow boundaries of Census blocks. As compared to the two previous plans, the types of features making up the Cooper plan boundaries are more similar to those found in the School Board Plan because it emphasizes roads to a much greater extent than streams.

27. The Cooper district is similar to the NAACP plan's District 2 in that both divide the corporate limits of the communities of Plain Dealing and Benton. But as noted in the School Board Plan discussion, in communities where an exclusionary settlement pattern occurs, the official corporate limits are not a fair representation of the community as a whole, and the exclusionary nature of this type of boundary invalidates the logic of strict adherence to corporate limit lines as a means of delimiting districts. Again, a boundary is created to serve the culture that creates it, not the other way around.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ GEORGE J. CASTILLE, III
GEORGE J. CASTILLE, III
April 4, 1995

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DECLARATION OF DR. RICHARD L. ENGSTROM

Pursuant to 28 U.S.C. Section 1746, I, Richard L. Engstrom, make the following declaration.

1. I am currently research Professor of Political Science at the University of New Orleans, in New Orleans, Louisiana, and Chairperson of the Representation and Electoral Systems Division of the American Political Science Association. A copy of my current curriculum vitae is attached to this declaration as Appendix A.

2. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political

process and to elect candidates of their choice. The results of my research have been published in the *American Political Science Review*, *Journal of Politics*, *Western Political Quarterly*, *Legislative Studies Quarterly*, *Social Science Quarterly*, *Journal of Law and Politics*, *Electoral Studies*, and other journals and books. Three articles authored or co-authored by me were cited with approval in *Thornburg* v. *Gingles*, 478 U.S. 30, 53 n.20, 55, 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I have also testified as an expert witness in over 30 voting rights cases in federal courts across the United States.

3. I have been requested by attorneys for the Department of Justice to examine the extent to which voting in recent elections involving a choice between or among African American and white candidates in Bossier Parish has been "racially polarized," as that concept has been defined by the United States Supreme Court in *Thornburg* v. *Gingles*. According to the Supreme Court, voting is racially polarized when there is "a consistent relationship between (the) race of the voter and the way in which the voter votes" or expressed more simply, when "black voters and white voters vote differently" (at 53 n.21). I am being compensated at a rate of $800 per day for my work on this case.

4. Elections involving an interracial choice of candidates have been analyzed because such elections are considered to be the most probative of racially polarized voting. Elections presenting voters with a choice between or among African American and white candidates were the only elections referenced by the

Supreme Court in *Thornburg* (see the review of the evidence at 52 and 58-61, and Appendix A at 80). The Fifth Circuit has ruled in *Citizens for a Better Gretna* v. *City of Gretna*, a Louisiana case, that "implicit in the Gingles holding is the notion that black preference is determined from elections which offer the choice of a black candidate." 834 F.2d 496, 503 (1987).

5. As a general matter, the most relevant interracial elections to analyze are recent elections for the office at issue, but when only a few minority candidates have contested elections for that office, it is appropriate to analyze the voting in interracial elections to other offices as well [see *Westwego Citizens for a Better Gov't v. City of Westwego*, 872 F.2d. 1201, 1208-1209 n.9 (5th Cir. 1989)]. I have analyzed therefore not only the three most recent interracial elections for seats on the Bossier Parish School Board, which were held in 1986, 1990, and 1993, but also other interracial elections. These include the only parishwide interracial election for a local office in recent years (the 1988 election for a seat on the 26th Judicial District Court) and all of the elections to local offices within the parish during the 1990s that involved an interracial choice of candidates.

6. Voters across all of Bossier Parish have been presented with a choice between or among African American and white candidates for local offices on only one occasion in recent years. That occurred in the 1998 primary election for a seat on the 26th Judicial District Court. In order to determine the extent to which voting in this election was divided along racial lines, I have performed a bivariate ecological regression analysis and a homogeneous precinct (or extreme case) analysis of this election. These are the standard methodologies,

approved by the Supreme Court in *Thornburg*, for assessing racial divisions in voting through precinct-level election returns (at 52-53).

7. Homogeneous precinct analysis focuses on precincts in which the voters are predominantly of one race or the other. The votes cast in these precincts provide the basis for estimates, under this methodology, of the level of support that each of the respective groups has provided a particular candidate. In the 1988 primary election, over 90 percent of the people signing in to vote was white in 25 of the 43 precincts in Bossier Parish. These precincts are identified therefore as homogeneously white. The African American candidate for the seat on the 26th Judicial District Court in this election, Bobby Stromile, was not the choice of the voters in these homogeneous white precincts. Stromile received 31.1 percent of the votes cast in this election in these 25 precincts, compared to 69.9 percent for his white opponent. The highest percentage of African Americans among those signing in to vote in any of the precincts was 75.1, so none of the precincts can be considered homogeneously African American and no extreme case estimates of the African American support for Stromile can be derived from this analytic technique.

8. Estimates of the support for Stromile among both African Americans and whites can be derived through regression analysis, however. This procedure relies on the votes cast in all of the precincts, not just those that are cast in racially homogenous precincts. Regression analysis is based on a systematic comparison of the votes cast for the various candidates in each of the precincts and the relative presence of African Americans among those signing in to vote in each precinct. There is a very consistent relationship between the percentage of those signing in to vote that was African American in each precinct and the percentage of the votes received by Stromile in the precincts. This relationship can be summarized by a correlation coefficient, which has a value of 1.0 when the relationship is perfectly consistent. The value of the correlation coefficient for the relationship between Stromile's vote and the racial composition of the precinct is .842, which is statistically significant at .0001 (in other words, the probability of a relationship of at least this magnitude occurring by chance is less than 1 in 10,000). The estimate of Stromile's support among the African Americans voting in this election, derived through regression analysis, is 79.2 percent. The regression-based estimate for his support among the whites voting in this election is 28.9 percent.

9. In addition to this latest parish-wide election, I have examined the votes cast in the last three elections for seats on the school board in Bossier Parrih in which the voters in the respective district had a choice between African American and white candidates. The most recent of these elections was in 1993. The other two occurred in 1990 and 1986.

10. The 1993 election was a special election for the District K seat on the parish school board. The African American candidate in this election, Jerome Blunt, had been appointed to this seat in 1992. He sought election to the seat the following year, along with one white candidate. District K is a homogeneously white district. At the time of this election, 92.0 percent of the registered voters in this district was white. On election

day, 97.4 percent of those signing in to vote was white. Blunt was obviously not the choice of the white voters in this election. Blunt lost his seat on the school board to his white opponent, receiving only 23.9 percent of the votes cast. Even if every vote Blunt received had been cast by a white voter, and every African American who signed in to vote had cast a ballot for Blunt's opponent, Blunt would still have received only 24.5 percent of the white votes in this election. Which candidate was in fact the choice of the few African American voters in this election cannot be determined through these precinct-level data.

11. The 1990 and 1986 interracial school board contests were both held in District J. The African American candidate in 1990 was Johnny Gipson, who competed with one white candidate for the position. In 1986 the African American candidate was Jeff Darby, who also competed for the position with one white candidate. Both of these candidates lost the election in this majority white district.

12. District J consisted of two precincts that have been described in this case's *Joint Statement of Material Facts and Conclusions of Law About Which There Is No Dispute* as "distinctive" and "unique" precincts in Bossier Parish (paragraphs 161 and 162). These were precincts 2-15 and 2-16, which included Barksdale Air Force Base and areas adjacent to the base. Many of the white voters in this area are military retirees who are not from Louisiana, let alone from Bossier Parish, and who therefore "tend on average to vote in a less polarized way" than other whites in the parish (paragraphs 162 and 163).

13. At the time of these elections, precinct 2-16 was homogeneously white and precinct 2-15 was racially mixed. In precinct 2-16, 97.4 percent of those signing in to vote in 1990 was white, and 99.2 percent of those registered to vote in 1986 was white. (Sign-in information is not available for elections prior to 1988). In both of these elections, this precinct supported the white candidate. Gipson received 31.8 percent of the votes cast in this precinct in 1990, and Darby received 26.6 percent in 1986. In contrast, Gipson and Darby both won precinct 2-15 in these elections. African Americans constituted 48.9 percent of those signing in to vote in 2-15 in 1990, and 48.9 percent of those registered to vote in 1986. Gipson received 73.5 percent of the votes cast in that precinct in 1990, and Darby received 75.9 percent of the votes cast in 1986. While the data for these two precincts do not provide a sufficient basis for deriving specific point estimates of the support of the different groups for Gipson and Darby, the contrast in candidate support between the two precincts certainly suggests that these African American candidates were the choice of the African American voters in these elections, but not the choice of the white voters.

14. In addition to the analyses reported above, I have also examined the vote in the six other elections in the parish during the 1990s in which voters were presented with a [sic] interracial choice of candidates. These elections occurred in different places around the parish. They include the elections for the District 1 and District 2 seats on the Bossier City Council in 1993, an election for the Haughton Board of Alderman [sic] and an election for Mayor in Benton in 1992, and a parish Police Jury election for District 7 and a mayoral election in Haughton in 1991. In all of these elections, a

majority of those signing in to vote was white, and in all of these elections the African American candidates were defeated, including the two African Americans who were incumbents at the time.

15. In the Bossier City Council elections in 1993, Will Jones was the African American candidate in District 1 and Jeff Darby was the African American candidate in District 2. Jones had two white opponents, while Darby, an incumbent, had one white opponent.

16. Voters in five precincts, all of which were homogeneously white, participated in the District 1 election in Bossier City. The percentage of people signing in to vote in this district that was African American was 4.9. The African American candidate in this election, Jones, was not the choice of white voters, having received only 10.1 percent of the votes cast in this election.

17. The other Bossier City councilmanic election occurred in District 2. Precinct election returns and sign-in data indicate that in this election the African American voters preferred Mr. Darby while the white voters preferred his white opponent. Mr. Darby's vote exceeded his opponent's vote in the only two precincts in which a majority of those signing in to vote was black. He received 66.2 percent of the votes cast in precinct 2-8, in which 72.0 percent of those signing in to vote was black, and 57.5 percent of the votes cast in precinct 2-15, in which 85.5 percent of those signing in to vote was black. The only other precinct that Darby won was his home precinct, 2-16, a homogeneously white precinct in the Barksdale Air Force Base area in which he received 52.7 percent of the votes cast. Darby

lost the other four precincts, three of which were homogeneously white. He received 36.7 percent of the votes cast in these precincts, and 46.7 percent in the district overall.

18. Darby's overall support among the African Americans voting in this election is estimated, through regression analysis, to be 61.0 percent, while his vote among the white voters is estimated to be 41.3 percent. The correlation coefficient for the relationship between the percentage of the votes received by Darby and the racial composition of the precincts is .569. This coefficient, based on only seven precincts, is not statistically significant. In the homogenous white precincts Darby received 45.7 percent of the votes cast.

19. In October of 1992, Cashie Cole, an African American incumbent on the Haughton Board of Aldermen, lost his bid for reelection. This was an at-large election in which five seats were to be filled and each voter had five votes to cast. All of the votes cast in the Haughton election were cast in one precinct, so no estimates of the racial division in the vote can be provided. African Americans constituted a minority, 25.6 percent, of the people signing in to vote in this precinct, however, and Mr. Cole finished sixth among seven candidates, with 13.9 percent of the votes cast.

20. Another interracial election in 1992 was a mayoral contest in the Town of Benton. Votes in this election were also cast in a single precinct, so again no estimates of the racial breakdown in the vote can be provided. African Americans constituted 38.3 percent of the people signing in to vote in this precinct, and the

African American candidate, Thelma Harry, received 36.2 percent of the votes cast.

21. In October of 1991, African American candidates competed with white candidates for the District 7 seat on the parish Police Jury, and for the mayoralty in Haughton. District 7 for the Police Jury consisted of five precincts. Precinct election returns indicate that the African American candidate in that contest, Leonard Kelly, was the choice of neither the African American voters nor the white voters. A regression analysis of the five precincts in this election produces an estimated vote for Kelly among African Americans of 41.5 percent, and among whites of 33.8 percent. The correlation coefficient for the relationship between the percentage of the votes received by Kelly and the racial composition of the precincts is .270. This coefficient is not statistically significant. Only two precincts were racially homogeneous; both were white precincts in which Kelly received 38.3 percent of the votes. (The only other African American candidate for a seat on the Police Jury in 1991 was Jerome Darby, an incumbent seeking reelection in District 10. There was no election in this district, however, as Mr. Darby was unopposed.)

22. The other election in 1991, that for the mayoralty in Haughton, was held in one precinct, so once again no racial breakdown of the vote can be estimated. African Americans constituted 25.4 percent of those signing in to vote in this precinct, and the African American candidate in this contest, Mark Hill, finished last among three candidates, with 10.8 percent of the votes.

23. In summary, the only parishwide election in recent years in which the voters in Bossier Parish had a

choice between an African American and a white candidate for a local office, the 1988 election for a seat on the 26th Judicial District Court, resulted in the voters being clearly divided along racial lines. Had only the votes of the African American voters been counted in that election, Bobby Stromile, the African American candidate, would have won that election. Stromile, however, was vetoed by the white voters of the parish. African American voters likewise would have elected Johnny Gipson to the school board in 1990 and Jeff Darby to the school board in 1986. These candidates were also vetoed by the white voters in those elections. In all three of these elections, therefore, voting was "racially polarized." While it is impossible to determine, given the limited data, whether Jerome Blunt was the candidate of choice of the few African American voters in the District K election for the school board in 1993, it is without question that he also was not the choice of the white voters in that election.

24. All of the other African American candidates competing in interracial elections in areas throughout the parish during the 1990s also lost. Data limitations preclude a determination of who the choice of the African American voters was in all but two of these elections, the District 2 contest in Bossier City in 1993 and the District 7 Police Jury election in 1991. In the first of these elections, the African American candidate, Jeff Darby was an incumbent favored by the African American voters in the district. He was defeated, however, by the white voters. In the Police Jury contest, the African American candidate does not appear to have been favored by either racial group. While the data for the District 1 election in Bossier City in 1993 do not allow one to determine who the choice of African

American voters was, it is without question that the African American candidate, Will Jones, was not the choice of white voters. The remaining three elections were held in only a single, mostly white precinct, and in all three the African American candidates were likewise defeated.

25. Given the difference in the candidate preferences of the African American and white voters in Bossier Parish revealed in the analyses reported above, I must conclude that African American voters are likely to have a realistic opportunity to elect candidates of their choice to the Bossier Parish School Board only in districts in which they constitute a majority of the voting age population.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 8, 1994.

/s/ RICHARD L. ENGSTROM
RICHARD L. ENGSTROM

[Engstrom vita attached to U.S. Exh. 107 omitted from J.A.]

Excerpts from Appellant-Intervenors Exhibit B (Final Direct Testimony of Appellant-Intervenor George Price dated April 9, 1995)

* * * * *

10. On August 24, 1992, I received, by fax transmission from the NAACP Redistricting Project, a set of computer drawn maps showing the configuration of two majority black election districts for Bossier Parish and population summaries for these two districts. These maps, and the population summary for the districts are labeled Defendant-Intervenors' Exhibit 7. One of these districts is in the northern part of the Parish and includes the concentration of black population in and around the municipalities of Plain Dealing and Benton, as well as the concentration of blacks in the community known as Princeton. This district has a black voting age population of 59%. The other district is in Bossier City and contains two areas of black population concentration, one known as Old Bossier and a second in the area near Barksdale Air Force Base where there is another substantial black population concentration. This district has black voting age population of 50.6%.

11. Some time in the next few days, I showed these districts to Gary Joiner and he told me that a partial plan was not an appropriate submission. I told Mr. Joiner that the NAACP did not care how the School Board constructed the other ten districts in the parish and that these two districts were only being submitted as examples to show that two majority black districts could be drawn. Despite this explanation, I was told that a submission from the NAACP would not be con-

sidered, unless we presented a plan that showed the boundaries for all of the election districts for the twelve school board seats. In addition, I was told by Mr. Joiner that it would be impossible to create a whole plan using those two majority black districts as a foundation.

12. I once again contacted the NAACP Redistricting Projection and told them of the response to the two districts. They indicated that they would create a whole plan based on the existing majority black districts just to show that this could be done and get it to me in time for the next meeting. On September 3, 1992, the date of the next School Board meeting, I received a fax from the Redistricting Project which contained a complete plan and population summaries for all of the districts in the plan. The fax included several different maps showing certain areas of the parish in more detail along with a cover memo. The cover memo, the maps, which were on 8 1/2 x 11 paper, and the population summary, are labeled Defendant-Intervenors' Exhibit 8. As the population summaries show, the plan had the [sic] essentially the same two majority black districts as had previously been sent and another district in which blacks might have close to a majority of the voters because of the low voter registration rates of those persons associated with Barksdale Air Force Base. This district has a 36.36% black voting age population. But when one census block that is entirely based on the Air Force Base is excluded, the remaining population has a 51.0% black voting age population.

13. On the evening of September 3, 1992, I was among approximately 40 other interested African-American citizens representing the NAACP, the

Concerned Citizens and the other groups in our coalition who attended the School Board meeting. I presented the full plan and supporting data to the School Board and once again asked that the Board adopt a redistricting plan that was fair to the African-American community. I told the Board, as I had told Mr. Joiner, that we were not requesting that the Board adopt the actual plan that we presented, but that they use the plan as a foundation for the creation of a fair plan. After I presented this plan, Mr. Joiner told the Board that the NAACP plan would break precinct lines [7] and could not be adopted because this would be a violation of a Louisiana law which he claimed prohibited the splitting of precincts by school boards. The Board took no action on the NAACP plan, and did not ask Mr. Joiner to explore the possibility of creating any alternative plans with majority black election districts at this meeting. Mr. Joiner did not present the School Board with any proposed maps that he had developed for their consideration at this meeting.

14. The next School Board meeting was scheduled for September 17, 1992. I explained to the Board that federal law should be considered over state law and that they could not ignore the Voting Rights Act because of their ideas about state precinct law. I told them no citizen's right to vote should be diluted by a precinct law. I strongly urged the Board to adopt a plan that had majority black districts so that we could have an opportunity for fair representation. I told them that we were prepared to take whatever legal action was necessary to protect our voting rights. The School Board sat silently through my presentation. Then they passed a motion stating that they intended to adopt the Police Jury plan as the school board election plan. They

set up a special public meeting on September 24, 1994 [sic], for public comment on the plan and indicated that they intended to take a final vote on the adoption of the plan on October 1, 1992. The Board stated that a map of the police jury plan would be put on display at the School Board offices up until the date of the final vote. The School Board said we could put the NAACP plan on display in the same area of the School Board building and I was told we would need a large size map for display. The maps that we had presented were only on 8 1/2 x 11 inch paper, as they were the ones that are attached to this testimony.

15. On September 18, 1992, the presidents of the six predominantly black community organizations in our coalition sent a letter to David Harvey, president of the School Board, in which we opposed use of the police jury lines, and called on the school board to "establish three school board districts that will greatly increase the possibility of minorities to be elected and represented on the Bossier Parish School Board." The organizations represented by the signatories to this letter were the NAACP, the Men's Club of Bossier, the Bossier Concerned Citizens Association, the Voters League, the Concerned Parents of Plain Dealing, and the Bossier Housing Tenant Coalition. The letter endorsed the plan submitted by the NAACP and called for its use as the "foundation to create black majority districts." That letter is attached as Defendant-Intervenors' Exhibit 9.

16. On Friday, September 18, I again contacted the NAACP Redistricting Project and informed them of our need for a large map and what had transpired at the September 17, 1992, meeting. They said they could

produce such a map and would do so as soon as possible. On Monday, September 21, I received a large map (about 2 1/2' X 3 1/2') from the Redistricting Project by Federal Express service. I took this to the School Board and had put it on [sic] display along with the population figures for the NAACP alternative districts.

17. On September 24, 1992, approximately 40 black citizens from various parts of the community attended the public hearing on redistricting. About 4 or 5 persons spoke against the plan on behalf of our coalition. I attended this meeting and was one of the speakers. All of these speakers spoke in favor of adoption of a plan that resembled the NAACP proposal and contained two majority black election districts. Not one person present at the public hearing spoke in favor of adoption of the Police Jury plan. The NAACP Redistricting Project had sent me a memo which I could use as the basis of my presentation to the Board. That memo is attached as Defendant-Intervenors' Exhibit 10. My presentation to the School Board covered all of the points in the memo as I basically read it to the Board. I again repeatedly emphasized that federal law should prevail over state law and that they could not ignore the Voting Rights Act over concern about precinct lines. I told them that the precinct law should not infringe on any citizen's right to vote. I told them that Joiner wasn't a lawyer and was wrong in what he told them. The School Board members listened to the comments of our representatives, with some of them occasionally stating that they couldn't do anything because of the problem with the precinct lines. The Board took no action at the hearing but just adjourned after hearing the comments from the public.

18. The NAACP and the other groups in the coalition were strongly opposed to the adoption of the police jury plan or any other plan that did not have at least two majority black voting age population districts as the new election plan for school board elections. Therefore, after the School Board meeting of September 17, we developed a petition opposing adoption of the police jury plan and calling for the creation "of three (3) Black Districts so Black Students and Citizens can be represented on the School Board." Along with members of the other groups in our coalition, various members of the NAACP circulated copies of this petition in all of the areas of black population concentration throughout Bossier Parish. Before the school board meeting on October 1, 1992, the NAACP submitted to the Board copies of this petition containing a total of over 525 signatures. Signatures from persons living in every area of black population concentration in the parish are found on these petitions. A copy of the petition is attached as Defendant-Intervenors' Exhibit 13.

19. After holding the hearing on September 24, 1992, the School Board voted to adopt the Police Jury plan as its election plan at its next meeting, which was held on October 1, 1992. I attended this meeting as did other concerned African-Americans and again we voiced our opposition to the adoption of the police jury plan and urged the Board to adopt a plan that gave the African-American community an equal opportunity to participate in the political process. The Board members listened to our comments but still adopted the Police Jury plan. Those who responded said they could do nothing because the Louisiana law that prohibited breaking precinct lines prevented them from taking any

other course of action. Shortly after the School Board adopted the Police Jury plan, I informed the NAACP Redistricting Project of what had happened. They explained the Section 5 review process and told me that they would help me in filing a comment with the Voting Section of the Department of Justice and the Redistricting Project itself would also file a comment which would include both legal arguments and technical information about the NAACP alternative districts. I monitored the progress of the School Board's preparation of their Section 5 submission, which was filed in January of 1993. Soon after this both the local NAACP and the Redistricting Project submitted their comments to the Justice Department.

20. After the Justice Department entered its objection, the NAACP repeatedly asked the School Board to change its election plan and adopt one that had two majority black districts. No such action was ever taken. The subject was not even brought up for a vote. On November 9, 1993, I went before the Police Jury and requested that they change the election districts for the parish to enable the creation of two majority black election districts and an election plan that allowed for equal participation of the African-American community. The remarks that I presented to the Police Jury were essentially the same as the text of the document attached to this testimony as Defendant-Intervenors' Exhibit 11. No response was forthcoming. The Police Jury has stated that they are not willing to change the election districts of Bossier Parish.

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Excerpts from Appellant-Intervenors Exhibit B (Supplemental Testimony of Appellant-Intervenor George Price dated April 9, 1995)

* * * * *

28. Sometime after the School Board had submitted its proposed redistricting plan to the Department of Justice, I had lunch with the Board president at the time, Barry Musgrove. A local minister, Reverend John Dansby joined us. I remember this meeting in particular because we ate at the University Club in downtown Shreveport, near Mr. Musgrove's office. I had been continuing to encourage the School Board publicly and some School Board members privately to consider a redistricting plan with some black majority districts. Mr. Musgrove told me at this lunch meeting that there "just was not anything he could do" to get the Board to consider such a plan. He did not mention anything about splitting precincts or about the shape of black majority districts, but explained that "the votes simply were not there." He said that, while he sympathized with the concerns of the black community, there was nothing more he could do for us on this isue because the Board was "hostile" toward the idea of a black majority district.

29. I also recall a discussion sometime in 1993 with another School Board member, Thomas Myrick. Several Board Members had met with several representatives of the black community to discuss some of our concerns about the operation of the School District. The meeting was fairly tense. After the meeting, Thelma Harry and I had a discussion with Mr. Myrick. One of the issues that had come up in the meeting was the fact that Plain

Dealing High School, a predominantly black school in Mr. Myrick's district, was the only Bossier Parish high school not to receive computers with certain dedicated revenues received by the Board. Mr. Myrick was angry and said that he was doing the best he could do. He then asked us why we wanted "his seat." He said that he had worked too hard to get that seat and that he would not stand by and "let us take his seat away from him."

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

/s/ GEORGE PRICE
GEORGE PRICE

April 9, 1995
Date

[NAACP letterhead omitted]

March 25, 1992

Mr. W.T. Lewis
Superintendent, Bossier Parish School System
School Board
P.O. Box 218
Benton, Louisiana 71006

Dear Superintendent Lewis:

It is my understanding that the Bossier Parish School Board is in the planning stage of reapportionment of school districts in Bossier Parish. If that is true, I would like to be included in all phases of the plan, and be place [sic] on the list to be notified whenever this issue is discussed.

I understand that in accordance with Federal rules because there are no minorities on the School Board, I would like to represent a portion of the community in this process.

I look forward to hearing from you concerning this matter in the very near future.

Respectfully yours,

/s/ GEORGE PRICE
GEORGE PRICE
President, Bossier Parish NAACP

[NAACP letterhead omitted]

August 17, 1992

Mr. W.T. Lewis, Superintendent
Bossier Parish School System
School Board
P.O. Box 218
Benton, Louisiana 71006

Dear Superintendent Lewis:

In a previous letter dated March 25, 1992, a request was made to you concerning the reapportionment of school districts in Bossier Parish. In that letter the Bossier Parish Branch NAACP requested to be included in the reapportionment process and to this date, August 17, 1992, we have not received a reply from your office. It is now our understanding that this process is nearly completed. We regret this. Therefore, we advise you that the Bossier Parish Branch NAACP will be in opposition to the continuation of school districts that do not fairly represent all parish citizens.

We further request that the Bossier Parish Branch NAACP be allowed to come before the Bossier Parish School Board and present our views on the issue. As you know there are no Blacks on the School Board nor has there ever been. We are very concerned about this and feel that this issue must be addressed in the reapportionment process in order to create a School

Board that represent [sic] the ethnic make-up of the Parish.

We look forward to working with you and the demographer in order to create districts that provide fair opportunity for anyone desiring to participate in the democratic process that select [sic] members for the School Board.

Because of the progress already made in this matter, we look forward to hearing from you within the next ten working business days.

Respectfully yours,

/s/ GEORGE PRICE
GEORGE PRICE, PRESIDENT
Bossier Parish Branch NAACP

August 17, 1992

Mr. W.T. Lewis
Superintendant, [*sic*] Bossier
Parish School System
School Board
P.O. Box 218
Benton, Louisiana

Dear Superintendant [sic] Lewis:

Because of Community concern regarding the Bossier Parish School System, several organizations met on August 13, 1992, to discuss and plan methods and procedure by which we could input to you and the Board our immediate concerns that affect Blacks in the Bossier Parish School System. A consensus was reached on the following enumerated items, and we request your immediate response as to adopting the solutions that we can agree upon.

1. The first priority of the Bossier Parish School Board should be to appoint a Black to serve on the School Board.

2. Develop and maintain an early recruiting program, starting at least at the sophomore level of college, and to include lay persons from the community in this process.

3. Demonstrate diligence in recruiting, hiring, retaining, and promoting African Americans in the Bossier Parish School System.

4. Widen the available pool of potential teachers by offering alternate certification primarily to liberal arts

majors, which has been mandated by the Louisiana Legislature.

5. Develop a reassignment and transfer program designed to insure parity or equalization of minorities at all schools, elementary, junior high or middle, and senior high so that black children can see people from their ethnic background working as professionals.

6. Organize and maintain a recruitment program with Grambling State, Southern University, Xavier University, and Dillard University to increase numerically the number of blacks in the Bossier Parish School System.

7. Establish and maintain a tracking system on Bossier Parish graduates so as to counsel and encourage as many as possible to pursue education as a major, and to return to Bossier Parish to work and live.

8. Seize the opportunity to appoint a black to the vacant position in District K which will encourage and assist other minorities in participating in the Democratic process which governs our Parish School System.

9. Encourage the Superintendent and each school board member to become actively involved in all communities, to bring and receive information calculated to improve the Bossier Parish School System on behalf of all citizens.

10. To guarantee participation by every Parish citizen in the upcoming reappointment of the School Board Districts in Bossier Parish to include a conserted effort to develop Black Districts that will insure black representation on the Bossier Parish School Board. Every

effort must be taken to insure that this process is completed for the current reapportionment year 1992.

We stand ready and willing to meet with you and all Board members to plan and discuss all aspects of the aforementioned requests. We too want a good Parish School Board that is responsive to the legitimate needs and sights of black citizens and their children.

We look forward to an immediate reply to this letter.

Respectfully yours,

/s/ GEORGE PRICE
GEORGE PRICE
NAACP

/s/ JERRY HAWKINS
JERRY HAWKINS
Concerned Citizens

/s/ JAMES ABRAMS
JAMES ABRAMS
Voters League

/s/ MARY WIGGINS
MARY WIGGINS
Bossier Tenant Coalition

/s/ GEORGE PRICE, JERRY HAWKINS
George Price, Jerry Hawkins
Men's Club of Bossier

NAACP REDISTRICTING PROJECT

MEMORANDUM

To: George Price, Bossier Parish NAACP

From: Samuel L. Walters, Assistant General Counsel
Ian Millett, Redistricting Analyst

Date: September 3, 1992

Re: Redistricting of Bossier Parish School Board
NAACP Proposal for Election Districts

Attached is a proposed plan for the election districts for the Bossier Parish School Board. The documents included are an overall map of the parish and several detail maps to show specific areas of the parish more clearly. Also included is a page containing population analyses of the proposed districts.

The plan we have prepared contains three districts that present a legally protectable opportunity for the minority citizens to elect the candidate of their choice. These are districts 1, 2, and 3. That districts 1 and 2 are classified as ones which would be under the protection of the Voting Rights Act should be obvious, as both contain more than 50% African American voting age population[1] and meet other redistricting criteria such as

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[1] The NAACP Redistricting Project use [sic] the Census Department category of Non-Hispanic Black, Hispanic, and Non-Hispanic White in calculating these totals. I think that the consultant used by the parish uses the Black and White categories, so his totals will not be identical to ours. In areas such as Bossier parish with small Hispanic populations, use of the Black category instead of the Non-Hispanic Black category will result in slightly higher black percentages for the districts.

one-person, one-vote, contiguity, and sufficient compactness. Failure to create such districts when such can be done would constitute a violation of Section 2 of the VRA.[2] Given this, it is highly likely that the Justice Department, in Section 5 proceedings, would enter an objection to a plan failing to create these districts or their electoral equivalents.[3]

District 3 contains Barksdale Air Force Base. One census block constituting most or all of the base contains 3,327 people. It is my understanding that few of these people are registered to vote and that even fewer go out to vote. If this one census block is subtracted from the population totals for district 3, what remains is a district with 52.4% black voting age population. Therefore, this configuration creates another district that would present an opportunity for the minority citizens of Bossier Parish to elect a candidate of choice. Construction of election districts involving similar positioning of military bases has been used in other jurisdictions to create minority electable districts and obtain Justice Department preclearance.[4]

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[2] *Solomon v. Liberty County, Florida*, 865 F.2d 1566, 1574 (11th Cir.), *rehearing en banc granted*, 873 F.2d 248 (11th Cir. 1988), *district court judgment vacated*, 899 F.2d 1012, later proceeding 111 S. Ct. 35 (1990).

[3] The NAACP Redistricting Project is prepared to submit these maps, data summaries, computer files and legal memoranda to the Justice Department if appropriate districts are not adopted by the school board.

[4] Even with the population of the base included, district 3 contains over 36% black voting age population and almost 40% black and Hispanic voting age population. In a recent case, a

The plan that we constructed for the other nine districts was done simply to comply with the request that a complete plan be submitted. The lines for the other districts are of no particular significance to us and could be changed by the School Board as they see fit as long as the changes do not dilute the level of voting strength developed by the proposed districts. If the consultant to the School Board would like a computer file with this configuration, he can contact us and specify the format he needs. We also can provide a larger map generated by a plotter.

[Attachments to memorandum omitted from J.A. See Appellant-Intervenors Exh. 8 for originals]

---

federal court found a violation for the failure to establish a 36% black population legislative district in Ohio when an analysis of local election factors showed the minority community would have a fair chance to elect its candidate of choice from the district. *Armour v. State of Ohio*, 775 F. Supp. 1044 (N.D. Ohio 1991) (three-judge court). It seems clear that we have shown that here with the analysis related to the base population.

September 18, 1992

Mr. David Harvey
President, Bossier Parish
School Board
P.O. Box 2000
Benton, Louisiana 71006-2000

In Turn: Mr. W. T. Lewis
Superintendent, Bossier Parish Schools
P.O. Box 2000
Benton, Louisiana 71006-2000

Dear Mr. Harvey:

We, Citizens of Bossier Parish, requested that you as our elected officials, develop and establish three black school board districts that will greatly increase the possibility of minorities to be elected and represented on the Bossier Parish School Board. We believe that any plan that does not provide for fair and true democratic representation for all citizens should not be approved by this board.

We request that you give the plan submitted by the NAACP your upmost [*sic*] consideration and that you use it as a foundation to create black minority [*sic*] districts. All parish citizens must be represented in the democratic process which governs our schools and by having them included, we create a school system that is strong, effective and impartial.

Therefore, we urge you to reject any plan that does not provide true representation for all citizens of the parish. This does include rejection of districts that

parallel with existing or recommended lines of the election districts of the Bossier Parish Police Jury.

Respectfully submitted:

/s/ GEORGE PRICE
GEORGE PRICE
NAACP
Men's Club of Bossier

/s/ JERRY HAWKINS
JERRY HAWKINS
Concerned Citizens
Men's Club of Bossier

/s/ JAMES ABRAMS
JAMES ABRAMS
Voters League

/s/ MARY WIGGINS
MARY WIGGINS
Bossier Housing
Tenant Coalition

/s/ ANDREW DAVIS
Concerned Parents of Plan Dealing

NAACP REDISTRICTING PROJECT

MEMORANDUM

To: George Price, Bossier Parish NAACP

From: Samuel L. Walters, Assistant General Counsel
Ian Millett, Redistricting Analyst

Date: September 24, 1992

Re: Redistricting of Bossier Parish School Board
NAACP Proposal for Election Districts
"Legal Opinions" Given to Board by
Gary Joiner

In light of our recent conversation in which you informed me of the proceedings before the Bossier Parish School Board, I wish to provide you with the following information which you can use in advocating your position before the Board. Some of these points have been made by you before, but it might be useful for you to have received the information from a lawyer since no attorney is stepping forth to tell the Board the undisputed principles of law that should control the redistricting of the Board.

1. The laws and Constitution of the United States are superior to those of Louisiana or any other state.

The laws and Constitution of the United States are always supreme to those of the various states. The Louisiana law stating that election districts must be created from whole precincts must give way to the

requirements of the Voting Rights Act and the U.S. Constitution. While it might be true that adoption of school board district lines that cross existing precinct lines is a violation of that Louisiana law, that is not a sufficient justification for violating Federal law. In all likelihood the oath of office taken by each of the current school board members included a pledge to uphold the laws and Constitution of the United States. The current board members should be mindful of this. The law requiring use of precincts is not in and of itself illegal, but it is a violation of the Voting Rights Act if its implementation causes dilution of the minority vote. Such is clearly the case in Bossier Parish.

Terrebonne Parish tried to use this argument to avoid creating a majority black district and our challenge to the Justice Department resulted in them having to redraw their lines to create a third district. These districts were created using census blocks.

2. Mr. Gary Joiner is a map drawer, not a lawyer, and his attempts at giving legal advice should be treated accordingly.

It seems that the local lawyers are abdicating their responsibility to provide the board with sound legal advice and are letting Mr. Joiner step into this vacuum and give "legal evaluations" of the various plans now before the board. Mr. Joiner is not a lawyer and is not aware of all of the legals ramifications of these evaluations. Furthermore, the evaluations are simply wrong. However, what is more disturbing is the fact that Mr. Joiner knows that the law is contrary to the opinions he is giving to the board. He and I have had conversations where he acknowledged that using the whole precinct law in this case and several others prevents or impedes

the creation of a majority black district and thus constitutes a violation of the VRA. He also understands the concept that Federal law is supreme.

3. The fact that the Justice Department precleared the earlier plan does not in anyway [*sic*] mean that the School Board's submission of the same district lines will be precleared or that they will withstand a lawsuit.

The Police Jury plans were precleared without any opposition. Since there were no presentations of alternate maps showing that other configurations offered more empowerment opportunities for the black community, the Justice Department probably didn't look at the Police Jury lines too hard. If the School Board persists and passes the same district lines, they can be assured that the NAACP Redistricting Project will assist the local Branch and a letter of opposition and the alternate maps to the Justice Department before the Parish's submission is even into Justice.

Even if the Justice Department were to preclear the same plan, such preclearance does not make the Parish immune from litigation. The Votings Rights Act specifically states that Justice Department preclearance under Section 5 does [not] determine the outcome of litigation filed under the more general provision of Section 2, nor does it preclude the filing of such litigation.

November 8, 1993

Presentation To The Bossier Parish Police Jury

To: Bossier Parish Police Jury

From: George S. Price, President, Bossier Parish N.A.A.C.P.

Greetings; etc.

Our purpose for appearing before the Bossier Parish Police Jury today is two fold. First, to discuss the Re-apportionment Re-Districting process and secondly, the general management of our Parish and the lack of minorities in this process or a part of this process, ie., jobs, contracts, and management positions as they relate to the number of blacks in Bossier Parish.

In reference to my letter dated October 7, 1993, I appreciate the prompt response from Mr. Ramsey. I must confess that the information I was given as it pertain [*sic*] to your re-districting plan was in error and incomplete. I apologize for not doing my homework, however, the fact still remains that during the re-districting process of 1990, the Police Jury of Bossier Parish failed to address the issues raised by the Black citizens of this Parish. And in fact failed to include that information presented by the Black Community in the completed Re-districting Plan submitted to the Justice Department that was in fact Pre-cleared.

This plan although pre-cleared by the Justice Department is not representative of the Parish. It, in fact, doesn't allow a single district where Black Citizens are a majority, although such a district could have been

drawn. Additionally, current districts lines doesn't insure that all Parish Citizens are able to exercise their rights as guaranteed under the 14th Amendment and the 1965 Voting Rights Act. Additionally, the same plan that was pre-cleared without opposition for the Police Jury has not received the same approval for the School Board. Hence we now have a dilemma. As the governing body, responsible for developing precincts, the Bossier Parish Branch N.A.A.C.P. and other groups here-by call upon you, the Bossier Parish Police Jury and the Bossier Parish School Board to publicly meet and develop a re-districting plan that will increase the number of minorities on these board [*sic*] and that more adequately reflect the make-up of this parish. All citizens of Bossier Parish have a inherited right to be a part of this (these) [*sic*] governing bodies that shape through policies and laws our lives, and the lives of our children. Current re-districting plans now being considered will be the basis for elections during the next 10 years. The Black Community cannot afford to want for a more appropriate time, the time is now—and the purpose is noble; to be included or to be excluded. So today, I call upon the Bossier Parish Police Jury to meet with the Bossier Parish School Board and together develop a plan that will insure that the population of the Parish is accurately reflected on these two governing bodies.

Also, the N.A.A.C.P. of Bossier Parish and other groups I represent expect to be a working partner in finding a just and fair solution to this problem.

Second. Employment in all agencies supervised by the Bossier Police Jury.

We believe that examples begin at home. Therefore, we think that the Police Jury office should reflect a variety of employees based upon the ethnic make-up of the Parish. More blacks should be assigned and employed throughout the Parish. We also believe the Police Jury should seize this opportunity to appoint a Black Assistant Administrator to assist the incoming Administrator. We also believe more managers and supervisors are needed to insure inclusion of all Parish citizens.

The Bossier Parish Branch N.A.A.C.P. and other Parish groups are committed to working together with our elected officials to develop and promote a Parish governing body that adequately reflect the tax paying citizens of this Parish. Our call for inclusion cannot go unanswered. We must be included to make this Parish all that it can be.

Thank you.

George S. Price, President
Bossier Parish Branch N.A.A.C.P.

cc: Concerned Citizens of Bossier Parish
Housing Tenants Coalition
Bossier Parish Voters League
Bossier Men's club

[NAACP Letterhead omitted]

July 14, 1993

Mr. Barry Musgrove
Bossier Parish School Board
P.O. Box 2000
Benton, LA 71006-2000

Dear Mr. Musgrove:

There continue to be issues brought before our organizations concerning our school system. Many of these concerns are issues that you and I have personally discussed, or have been before the Bossier Parish School Board. In the interest of remaining focused on the betterment of our school system and our children, I respectfully request, in the name of our organizations, that our School Board address these concerns listed below. We request your response as to steps you will take to resolve these concerns.

1. The establishment of a community advisory group —which would supply input to the School Board concerning educational matters.

2. Recruitment and placement of black teachers and administrators in the Bossier Parish School System.

3. Plans to address the low math/science scores of our children, to include scores of Bossier Parish students, along racial lines.

4. The updated status of the Bossier Parish School Board Redistricting Plan.

5. Establish a committee to study the possibility of including a black history year round program in the Bossier Parish School system. Possibly, eliminate Black History month.

6. Provide our organizations with the policy and procedure for bidding on contractual services provided to the school system. Also including a list of such contracts whenever they are let for bids.

7. Provide our organizations with a list of recent contractors that have completed work for the Bossier Parish School System. Please include whether or not any of those were minorities.

Barry, I am committed to enhancing the educational system of Bossier Parish. I will eternally feel that an effective and progressive system must include fair and equal treatment for all students. I want to work with you and the Board to make this a reality. I stand ready and am willing to assist you in any capacity.

We can work together to make our system better.

Respectfully,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

cc: Concerned Citizens of Bossier Parish
Men's Club of Bossier
Voting League of Bossier Parish

Nos. 98-405 and 98-406

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOLUME 2)

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NOTICES OF APPEAL FILED: July 6, 1998
PROBABLE JURISDICTION NOTED: January 22, 1999

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August 10, 1993

Mr. Barry Musgrove, President
Bossier Parish School Board

Mr. W.T. Lewis, Superintendent
Bossier Parish School System

This informal response is provided to you as a follow-up to our presentation on July 15, 1993.

The Executive Committee of the Bossier Parish Branch N.A.A.C.P. and other organizational leaders met on July 20, 1993 to discuss the best method of providing recommendations to you that we feel will improve certain areas of our school system. We hope the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns.

Members of our community stand ready and willing to do whatever we can to impact the concerns raised by our community.

Sincerely,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

The Coalition of Bossier Parish

Concerned Citizens of Bossier Parish, Men's Club, Concerned Citizens of Plain Dealing, Bossier Parish Branch N.A.A.C.P.

Suggested Solutions To Concerns

Mr. Barry Musgrove, President, Bossier Parish School Board
Mr. W.T. Lewis, Superintendent, Bossier Parish School System

This informational response is provided to you as a follow-up to our presentation on July 15, 1993.

The Executive Committee of the Bossier Parish Branch N.A.A.C.P. and other organizational leaders met on July 20, 1993 to discuss the best method of providing recommendations to you that we feel will improve certain areas of our school system. We hope the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns.

Members of our community stand ready and wiling to do whatever we can do to impact the concerns raised by our community.

Suggested Solutions:

1. The Educational Committee of the Bossier Parish Branch N.A.A.C.P. will be responsible for providing input to the School Board and the Superintendent on minority matters. The Committee will also serve as the communication vehicle between our organization and the Bossier Parish School System. The Committee will

provide its finding and receive support from the Branch President.

2. The issue of teacher recruitment concerns us greatly. We strongly feel that additional efforts can result in the placement of additional minority teachers into the Bossier Parish System. The following steps may help.

   a. Expand the area of recruitment to include the entire state of Louisiana, East Texas and Southern Arkansas.

   b. Monitor each school for minority hiring.

   c. Set pre-hiring standards and goals for each school. Additionally, require schools to reflect a more accurate percentage of teacher to student ratio according to race.

   d. Place qualified applicants in schools according to need. Do not leave placement (acceptance or rejection) solely to the discretion of the Principles [*sic*].

   e. Add community professionals to the recruitment team and give the team the authority to make a commitment for employment to qualified candidates while on recruitment trips.

   f. Tap high achievers (High School Seniors) and provide financial assistance to them to include a contractual agreement for employment upon successful completion of all requirement [*sic*] (similar to the South Carolina Plan).

g. Insure compliance with the 1970 consent decree show [*sic*] 75/25 hiring ratio until requirements are met. Currently, we're not in compliance.

3. Student performance in the area of math/science can be improved. We feel that the following steps wil[l] help.

   a. Establish an extended school program that will encounter those students who are not achieving at a satisfactory level or working below grade level. To include a summer program if necessary.

   b. When available, add black counselors to schools with high minority populations. This will help improve communication between teachers and students. This may also effect the number of behavior problems that we now have.

   c. Hire an administrative field representative that is knowledgeable in curriculum to address student progress parish wide with the added responsibility to make recommendations to the Bossier Parish School Board and the Superintendent on ways to improve the levels of student achievement.

4. As you know, race relations in our schools are not very good. We still have segregation within an integrated environment. Based on my knowledge, I recommend you establish a Race Relations Program for the Bossier Parish School System.

5. Set as a School Board agenda goal to end attendance certificates and social promotions.

   a. Integrate a vocational program into the system that will benefit those students who are receiving a 12 year certificate of attendance. Thereby resulting in them receiving some type of skill that is in demand.

   b. The afore mentioned number, 3a, will correct these deficiencies.

6. Special education programs must be given greater priority. Once the number of students in such programs continue to increase, valid programs must be instituted to meet the needs of these students (see 5A). Resources and priorities must be changed to meet these challenges.

7. Junior High School is considered an educational Bonanza for our students. During these years, role models and peers take on added importance. Because of the unquestionable importance of Junior High School. We urge the Board and Superintendent Lewis to upgrade the proposed coordinator positions at Rusheon and Princeton Junior High Schools to Assistant Principle [*sic*] positions and fill them with black administrators. There are no black administrators at the Junior High level in the Bossier Parish School system.

8. The original criteria set for the Achievement Center at Butler School has apparently changed. Can anyone define the purpose of the Achievement Center in relations to its original plans.

What do[es] the Bossier Parish School system offer at-risk students?

Summary:

Semi-annual reports indicate that the Bossier Parish School System is functioning according to the guidelines laid down in the consent decree of 1970. However, a study of these reports that go back to 1970 indicate otherwise. Since 1970, we have seen a steady decline in the number of black teachers and administrators in the Bossier Parish System while the number of black students continue to increase. We have also noted that the number of white teachers and administrators have continued to increase while the white student population have declined.

Based on the information contained in your reports. Black teachers has declined in our system by more than 43% down from 186 in 1971 to 107 in 1992 while white teachers increased by more than 48% up from 695 in 1971 to 1029 in 1992.

Student population has not kept pace with these figures, in fact, student population figures are exactly opposite. For example, in 1971, black students made up 22% of the student body while whites accounted for 77%. In 1992 blacks comprised more than 28% of the student body while whites declined to 70% down, more than 8%. This data shows an overall increase of over 6% for blacks and a decrease of 8% for whites.

Accordingly, we feel a similar trend should be reflected in the number of teachers and adminis-

trators. However, the opposite has happen. We call upon the Bossier Parish School Board and School System to take immediate steps to reverse these trends.

Thank you,

/s/ GEORGE S. PRICE
GEORGE S. PRICE
President
Bossier Parish Branch N.A.A.C.P.

Excerpts from Appellant-Intervenors Exhibit E (Final Direct Testimony of Appellant-Intervenor Thelma Harry dated April 9, 1995)

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16. On several occasions in recent years, the NAACP has presented the School Board with a list of concerns about the operation of the school system. These lists have been developed from meetings of the executive committee of the NAACP where we tried to take all of the many complaints we had received about the school system and put them into categories. Most of these lists have contained the same problems over and over as no action ever seems to be taken to solve the problems. After one time when we presented them with a list of some of our complaints, the School Board set up a Community Affairs Advisory Council in early 1993. This was to be a committee of six people selected by the NAACP and six people selected by the School Board. I was one of the representatives selected by the NAACP. There were two preliminary meetings to establish the Council and its membership. Then regular meetings were to be held monthly. After only one regular meeting, we received a letter, dated March 16, 1993, stating that the School Board had canceled the Council. A copy of the letter that I received from the School Board announcing the disbanding of the committee is attached as Defendant-Intervenors' Exhibit 17. We were also told that the Council had to be canceled because there was already a Bi-Racial Committee established by the consent decree from the school

desegregation suit and this one would be illegal. We were angered and disappointed at the cancellation of the Council, but we were not really surprised as it seems that the School Board and school system do not really want to deal with the problems that face the black students and parents. Many of us had no knowledge that there was any such Bi-Racial Committee in existence with which the Council could have conflicted. Then we found out that the annual reports which the School Board had been sending to the Court and the Department of Justice left the impression that the original Bi-Racial Committee was still functioning when in fact it had not met in years. This made the leadership and membership of the NAACP and other groups very disappointed and angry.

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Excerpts from Appellant-Intervenors Exhibit E (Supplemental Testimony of Appellant-Intervenor Thelma Harry dated April 9, 1995)

* * * * *

19. After one of the meetings of a group of NAACP members and a few school board members in 1993 (see paragraph 17 of the Final Direct Testimony of Thelma Harry), Mr. George Price and I had a conversation with Mr. Tom Myrick. Things in the meeting itself had been somewhat on edge because it was clear that the representatives of the black community were not going to be satisfied by more promises to look into problems, but wanted concrete steps taken to solve the problems. During this meeting, one of the issues we had raised was the fact that the Plain Dealing High School was the only high school in the parish that did not get any money for computer purchases from a program called BEEF. Plain Dealing is in the northern part of the Parish in Mr. Myrick's district. It is the only majority black high school in the parish. After the meeting, Mr. Myrick complained that we were always trying to take his seat and stated that he was not going to let us take it away from him.

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, *PLAINTIFF*

versus

JANET RENO, *DEFENDANT*

GEORGE PRICE, ET. AL, *DEFENDANT INTERVENORS*

DIRECT TESTIMONY OF
DAVID CREED

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1. My name is David Arnold Creed. I am the Director of North Delta Regional Planning & Development ("North Delta") in Monroe, Louisiana. I have held this position for 14 years.

2. North Delta provides technical assistance and demographic advice to governmental bodies throughout the northeastern Louisiana region.

3. One of the services we provide is consultation concerning, and the development of, reapportionment plans. We draw redistricting maps and precinct maps for school boards, parishes, and municipal governments in Louisiana. In addition, I testified in the lawsuit of *Knight v. McKeithen*, No. 94-848-A. 2 (M.D. La. August 19, 1994), on behalf of the defendant East Carroll School Board.

4. As a result of our redistricting work I am familiar with the requirements of both federal and state law concerning reapportionment in Louisiana. In particular, I am familiar with the preclearance requirements Section 5 of the Voting Rights Act and with Act 925, the Louisiana Statute limiting the ability of local school boards to alter precinct lines.

5. Over the past two years, I have worked with several governmental entities on reapportionment projects which have involved potential conflicts between the Voting Rights Act and the precinct-splitting law. In none of these situations have the limitations on a school board's ability to split precincts prevented the adoption of a redistricting plan that met the requirements of Section 5.

6. For example, we worked with the West Carroll Parish School Board in developing its redistricting plan. West Carroll was unable to develop a reapportionment plan which met the requirements of the Voting Rights Act without splitting some precinct lines. However, after the Department of Justice precleared West Carroll's plan it was able to satisfy state law requirements by having the West Carroll Police Jury, the parish governing body, alter existing precinct lines.

7. Likewise, we worked with the Franklin Parish School Board, whose situation was similar. Franklin needed to split precincts to satisfy Section 5 requirements. We helped the Franklin Parish School Board develop new precinct maps and descriptions which it submitted to its police jury for approval.

8. In both West Carroll and Franklin Parish, the school boards paid the police juries' costs in establishing new precinct lines, which amounted to one or two thousand dollars in each case. Once the school boards agreed to cover these costs, the police juries expressed no further reservations about adopting the precinct changes necessary for the school boards to implement election plans in compliance with federal law.

9. We also worked with the Ouachita Parish Police Jury and Registrar of Voters in drawing and describing new precincts for used [*sic*] by the Monroe School Board, a metropolitan district within Ouachita Parish.

10. Although municipal governments in Louisiana, as opposed to school boards, are not governed by the restrictions of Act 925, they also frequently have to rely on parish governing bodies, usually the parish policy [*sic*] juries, to alter precinct lines. For example, many small municipalities with single member districts have more seats in municipal elections than there are regular precincts within the borders of the municipality. This is another occasion in which police juries are frequently called upon to "split" precincts.

11. Such precinct-splitting raises few practical difficulties. To establish new precincts requires new maps, legal descriptions, and a resolution by the parish governing body. To implement them requires new polling places, or more simply the use of lockouts or additional machines at existing polling places. These efforts were the principal sources of the costs identified in paragraph 8 in West Carroll and Franklin Parishes.

12. Police juries and school boards in Louisiana also frequently adopt different single-member election districts. For example, five or six of the 11 parishes in

my planning district have different election plans for school board and policy [*sic*] jury.

13. In sum, while I have observed several instances of apparent tension between the requirements of Section 5 of the Voting Rights Act and Louisiana's precinct-splitting statute, this tension has been fairly easily resolved by several school boards with which I am familiar.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 1995 in the City of Monroe in the Parish of Ouachita, State of Louisiana.

/s/ DAVID ARNOLD CREED
DAVID ARNOLD CREED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, *PLAINTIFF*

Versus

JANET RENO, *DEFENDANT*

GEORGE PRICE, ET AL, *DEFENDANT INTERVENORS*

SUPPLEMENTAL TESTIMONY OF DAVID CREED

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14. I heard Mr. Joiner testify that he informs school boards of all of their redistricting options. I also do the same. This includes informing them about Act 925, the Louisiana statute limiting precinct splits by school boards. In helping to prepare redistricting plans based on the 1990 census, I also informed school boards that one of their options was to adopt a plan splitting precincts and ask the police jury to establish the necessary new precincts. I also informed them that if they adopted a plan with a number of seats different than the police jury, that they had the ability themselves to establish some new precincts prior to December 31, 1992.

15. In addition, I informed school boards about the Voting Rights Act, including the possibility that its requirements may conflict with Act 925. I informed

clients that in such a situation federal law prevails and claiming that they are unable to split precincts is not a valid excuse. I would not consider myself to have done my job as a consultant if I had not informed them of this matter and others.

16. I heard Mr. Myrick and Mr. Musgrove say that they relied on Mr. Joiner's statement that they could not split precincts. In my experience, this would be unusual. Board members normally ask many questions, are nearly always concerned about incumbency, and usually direct me to prepare a plan different than what I originally recommend. This is also the case with my colleagues in the other Planning and Development Districts around the state of Louisiana. For example, when I initially told the West Carroll Parish School Board that they likely would need to have a black majority district, some individual board members told me that they did not wish to be "blamed" for this and that if they had to, it would be better if it were construed to be forced by the "federal government." As I testified in my original direct testimony, this happened.

17. I heard Mr. Joiner testify about his estimates of the cost of holding elections with additional precincts. In my view, his estimates represent total costs and not costs to the local school board. Furthermore, they represent a worst case scenario in terms of total costs because they:

(1) assume separate election commissioners and supervisors for every precinct;

(2) assume that lockouts could not be used; and

(3) assume that police juries would not reconsolidate precincts.

All of these assumptions are unlikely.

18. Mr. Joiner's rebuttal testimony misses the point of my direct testimony concerning municipal elections in Louisiana. That point is that police juries in virtually all sixty-four of Louisiana's parishes have to deal with precinct splitting by municipalities. While this splitting is not prohibited by state law, it still requires local government bodies to incur the same costs and inconveniences of precinct splitting that school boards do when they must ask police juries to split precincts.

19. I heard Mr. Joiner testify about his concern about precinct splitting. In my work, I am called upon to help governmental bodies develop precinct lines. Precincts are drawn largely based on geographical concerns rather than demographic characteristics of the population. They vary widely in the number of voters per precinct and are somewhat arbitrary.

20. I disagree with Mr. Joiner's definition of gerrymandering. To me there is a difference between attempting to draw a black majority district and racial gerrymandering. The difference is that gerrymandering involves drawing voting districts in a tortuous or convoluted way in order to render contiguous pockets of minority population that cannot be connected consistent with normally redistricting principles.

21. I recently was shown the Bossier Parish School Board's proposed redistricting plan and the illustrative plan developed by Bill Cooper without being told which was which. In my opinion, neither contains districts that appear to be gerrymandered. Furthermore, I

concluded that neither plan on the whole was any more "gerrymandered" in its appearance than the other. Both appeared to have districts that were sufficiently compact and contiguous.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of April 1995 in the Washington, D.C.

/s/ DAVID ARNOLD CREED
DAVID ARNOLD CREED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-01495
(CRS) (LHS) (GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

V.

JANET RENO, DEFENDANT
GEORGE PRICE, ET. AL, DEFENDANT INTERVENORS

FINAL DIRECT TESTIMONY OF
WILLIAM S. COOPER

Direct Testimony of William S. Cooper

1. I am William S. Cooper and I reside in Richmond, Virginia. I serve as a redistricting consultant for the defendant-intervenors in this lawsuit. I have a B.A. degree in Economics from Davidson College in Davidson, NC. In addition, I completed graduate courses in urban and regional planning at Virginia Polytechnic Institute and State University in Blacksburg, VA.

2. I have been employed since 1986 by the American Civil Liberties Union of Virginia, Inc., the Virginia affiliate of the American Civil Liberties Union, and the American Civil Liberties Union of Virginia Foundation, Inc.

3. Since 1986, I have prepared redistricting maps in approximately 325 jurisdictions for Section 2 litigation, Section 5 comment letters, and for use in other efforts

to promote compliance with the Voting Rights Act of 1965. I have prepared election plans for Section 2 litigation in Connecticut, Florida, Georgia, Louisiana, Maryland, Nebraska, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and Tennessee.

4. The report I prepared for this case, entitled Report of Williams S. Cooper and its appendix provide further details regarding my experience as an expert witness and my qualifications relating to redistricting and geographic information system software. That report is attached to this testimony as Exhibit 13.

Bossier Parish Redistricting: Methodology and Sources

5. I am familiar with the manner in which census data is collected and compiled by the United States Bureau of the Census for use in redistricting.

6. I use the 1990 Bureau of the Census PL 94-171 data file for my redistricting work. The PL 94-171 file is the population file designed by the Bureau of Census primarily for use in reapportionment of state and local governments. The file contains basic data on the population and voting age population found in units of census geography such as states, counties, municipalities, precincts, census tracts, and census blocks. It breaks this data down among the major racial and ethnic groups is [*sic*] our society, containing information about the following population and voting age population categories: white, black, American Indian/Eskimo, Asian, Hispanic, and Other Minority.

7. I also use the Bureau of the Census TIGER (Topologically Integrated Geographic Encoding and Referencing) files. The TIGER files contain data

recording the longitude and latitude coordinates of the boundaries for all of the geographic units that were used in the 1990 census. Using geographic information system (GIS) software which was specially developed by a number of companies to use the TIGER files, it is possible to create digitized maps for display and analysis on computer screens of any state, county, or locale in the United States. The programs allow for the thematic display of any census data that one wishes to analyze.

8. *GisPlus*, the geographic information system software I used since 1991, converts the data in the TIGER file into an on-screen map. I use the *GisPlus* software on a 386-33DX IBM compatible personal computer.

9. With the *GisPlus* software and similar geographic information system software packages, voting plans can be developed using units of census geography from precincts down to census blocks. A census block is the smallest geographic tabulation area from the 1990 census. A block may be as small as a regular city block bounded by four streets, or as large as several square miles in a rural area. Census blocks are bounded on all sides by visible features such as streets, rivers, and railroad tracks or, occasionally, by nonobservable political boundaries such as municipal or township lines.

10. I have used the *GisPlus* software, together with the Census Bureau's PL 94-171 file and TIGER files, in all of the redistricting work I have conducted relating to the Bossier Parish School Board. All districts were drafted at the census-block level. I have also done analysis on a database for Bossier Parish constructed by Gary Joiner, the redistricting consultant for the School Board. This database was also constructed on

GisPlus, as Mr. Joiner also uses this program for some of his work.

Population and Geographic Characteristics of Bossier Parish

11. I have looked at the data for Bossier Parish found in the PL94-171 files and summarized the basic population characteristics of the parish. According to the 1990 census, Bossier Parish, Louisiana has a population of 86,088, with a black population of 17,381. Bossier Parish has a total voting age population of 60,904 and black voting age population of 10,784. African Americans comprise 20.2% of the total population and 17.7% of the voting age population in Bossier Parish. Throughout my testimony, the terms "black" and "African-American" are used interchangeably. Also, I make no distinction between Hispanic blacks and non-Hispanic blacks. According to the 1990 census, of the 17,381 blacks in Bossier Parish, 380 (2.19%) are Hispanic.

12. Using data from the GIS database, it is also possible to ascertain some of the basic physical features of Bossier Parish. The parish encompasses an area of 854.27 square miles. The Parish is bounded to the north by the state of Arkansas. The Red River runs along the western length of Bossier Parish, separating the Parish from neighboring Caddo Parish. Red River Parish lies to the south. Webster and Bienville Parishes are to the east. The Parish is 59 miles long from the extreme northwest to the extreme southeast.

13. The bulk of the black population of Bossier Parish is concentrated in Bossier City and in and adjacent to the Parish's three other municipalities—Benton, Plain Dealing, and Haughton. Bossier City has

the largest population of the four municipalities, with 52,721 residents, of who 9,521 (18.06%) are African-American. Thus, 54.78% of the African-Americans in Bossier Parish live in Bossier City. Benton has 2,047 residents, of whom, 849 (41.48%), are African-American. Plain Dealing has 1,074 residents, of whom 354 (32.96%) are African-American. Haughton has 1,664 residents, of whom 464 (27.88%) are African-American. The combined African-American population in all four municipalities is 11,188. Black residents in the four municipalities represent 64.37% of the parish-wide black population.

District Election Plan for the Bossier Parish School Board

14. In July, 1994, counsel for the defendant-intervenors asked me to determine whether it is feasible to develop district election plans for the 12-member Parish School Board, such that African-Americans would constitute a majority of the voting age population in one or more districts.

15. In response, I developed a plan for the Bossier Parish School Board with two majority-black voting age population districts. Maps describing this plan with summary population data are attached as Defendant-Intervenors' Exhibit 18. The plan is labeled "Plaintiffs' 12-district Plan", since it was prepared for testimony in *Knight v. McKeithen*, a case in which all of this case's intervening defendants were the plaintiffs.

16. Under the plan shown in Defendant-Intervenor's Exhibit 18, Districts 2 and 8 are majority-black. District 2 is entirely within Bossier City. District 2 has an African-American voting age population of 54.1%. District 8 is in the north and central portion of the Parish,

encompassing portions of Plain Deal and Benton. District 8 has a black voting age population of 58%.

17. The overall deviation for the plan is 8.85%. The plan complies with the guidelines governing redistricting, including but not limited to the principle of one person, one vote, the prohibition on diluting minority voting strength, and other factors such as contiguity and compactness. All of the plans and districts that I have created for Bossier Parish fall within + or -5% deviation, insuring conformance with the one-person, one-vote standards that apply to local governments. In comparison, the redistricting plan both adopted by the Bossier Parish Police Jury and submitted to the Department of Justice by the School Board has a total deviation in excess of 10%.

18. In drafting "Plaintiffs' 12-District Plan", I did not have access to information regarding the location of the residences of current School Board members. In addition, I was not provided with a map showing boundaries for the 13 new precincts that were created after the 1991 Police Jury redistricting in Bossier Parish.

19. Using the Census Bureau's TIGER files, I was able to identify the precinct boundaries for the 43 precincts (called voting tabulation districts by the Census Bureau) that existed prior to the 1991 redistricting of the Police Jury. I took these precinct boundaries into consideration when creating Defendant-Intervenors' Exhibit 18. Occasionally, I made the outline of a district more irregular than it would have been if I had disregarded the precinct lines.

Additional Configurations for Majority-Black Districts

20. In September, 1994, counsel for defendant-intervenors instructed me, for illustrative purposes only, to prepare other configurations for the majority-black districts. First, I was asked to redraw the two majority-black districts found in Defendant-Intervenors' Exhibit 18 for the purpose of getting the highest possible black voting-age population in each district while using only *de minimis* standards of compactness and contiguity, but staying within the±5% deviation range that insures compliance with the one person, one vote doctrine. These illustrative configurations are attached as Defendant-Intervenors' Exhibit 19. The Bossier City district, labeled "District 2A - Maximum Black Percentage", has a black voting age population of 59.1%. The district in the north-central portion of the Parish, labeled "District 8A - Maximum Black Percentage", has a black voting age population of 61.1%. The Bossier City district has a deviation of -4.84%. The district in the north-central part of the Parish has a deviation of -4.86%. These two districts are drawn so as to allow for the creation of the remaining ten districts in a manner meeting applicable legal requirements. They show the shape of districts that would result if capturing concentrations of minority population were the overriding focus in creating the districts. These illustrative configurations show that the majority-black districts proposed by the defendant-intervenors in the *Knight* litigation for use in School Board elections do not maximize black voting age population. Likewise, comparison of the shapes of these configurations shows that the majority-black districts proposed by the defendant-intervenors in the *Knight* litigation are substantially more regular

in shape than the districts that maximize black voting age population.

21. Second, I was asked to create other configurations for the larger of the two majority-black districts, District 8, which is located in the north-central portion of the Parish. These configurations were to be drawn with the objective of creating a somewhat more regularly shaped district than District 8 under the plan shown in Defendant-Intervenors' Exhibit 18.

22. I produced two options displayed in Defendant-Intervenors' Exhibit 20. "District 8B" has a black voting age population of 54.2%, "District 8C" has a black voting age population of 55.3 %. The deviation for the two districts is -4.68% and -4.67%, respectively. Both districts encompass portions of Benton and Plain Dealing. Each of these districts is drawn so as to allow for the creation of the remaining eleven districts of the School Board in a manner meeting applicable legal requirements.

23. I also have compared several configurations of District 8, the north-central majority black district, with those for District 4 of the proposed School Board and existing Police Jury plan. District 4 is a majority white district. This analysis reveals that District 4 is also centered in the north-central portion of the Parish. It has a land area of 424 square miles (49.62% of the area of the entire Parish) and is 33.5 miles long from the extreme northwest to the extreme southeast. District 8, as shown in Defendant-Intervenors' Exhibit 18, has a land area of 276 square miles and is 34.5 miles long from the extreme northwest to the extreme southeast. In contrast, "District 8B" has a land area of 218 square miles and is 31.5 miles long from the extreme northwest

to the extreme southeast. "District 8C" has a land area of 252 square miles and is 34.5 miles long from the extreme northwest to the extreme southeast. Each of these configurations of District 8 that I have developed is virtually identical in length to the School Board's proposed District 4 and has a land area considerably less than that of the School Board's proposed District 4. Chart[s] comparing these district lengths and areas are attached as Defendant-Intervenors' Exhibits 30 and 31.

24. Based on the preceding analysis, in my opinion, the majority-black districts proposed in the *Knight* litigation are reasonably compact.

Census Data Analysis of Relative Socio-Economic Status Methodology and Sources

25. At the request of counsel for defendant-intervenors, I prepared tables and bar charts comparing socio-economic characteristics of the population by race for Bossier Parish, which is Defendant-Intervenors' Exhibit 21 to this testimony. I extracted the data for these tables and charts from the 1990 Census of Population and Housing Summary Tape File 3A on CD-ROM (Louisiana). The title of this data source is *Census of Population and Housing: 1990: Summary Tape File 3 on CD-Rom Technical Documentation/ prepared by the Bureau of the Census.* —Washington: The Bureau, 1992. This Census Bureau data source contains far more detailed information about the population of an area than the PL94-171 file referred to previously. I formatted the data and calculated the percentages using a computer spreadsheet, Microsoft *Excel for Windows*. The bar charts were also prepared with Microsoft *Excel*.

26. The five variables displayed in these tables and charts are listed below.

P58 RACE BY EDUCATIONAL ATTAINMENT

P71 RACE BY SEX BY EMPLOYMENT STATUS

P82 RACE OF HOUSEHOLDER BY HOUSEHOLD INCOME IN 1989

P115A PER CAPITA INCOME IN 1989 BY RACE

P119 POVERTY STATUS IN 1989 BY RACE BY AGE

H39 RACE OF HOUSEHOLDER BY VEHICLES AVAILABLE

27. According to the 1990 census, there are wide socio-economic disparities between African-Americans and whites in Bossier Parish.

African-Americans experience a poverty rate that is nearly five times the poverty rate for whites. In 1990, there were 7,380 African-Americans (44.67%) living below the poverty line in Bossier Parish, while 5,961 whites (9.09%) were below poverty.

The percentage of African-Americans living in households with incomes below $15,000 is nearly three times as high as white households with incomes below $15,000. In 1989, 56.37% of black households in Bossier Parish had incomes below $15,000 compared to 21.71% of white households.

The per capita income of African-Americans is only 40% of that enjoyed by whites. The 1989 per capita income of the black population in Bossier Parish was

$5,260 compared to $12,966 per capita income for whites.

The unemployment rate for African-Americans is nearly four times the rate for whites. In April of 1990, the unemployment rate for persons 16 and over in Bossier Parish stood at 22.37% for blacks in contrast to 5.81% for whites.

The percentage of African-Americans without a high school degree is two times the percentage of similarly situated whites. Of African-Americans 25 years of age and over in Bossier Parish, 40.57% have not finished high school, while 16.68% of their white counterparts are without a high school diploma.

Black households are six times more likely as white households to be without access to vehicles. One-fourth of black households (25.87%) in Bossier Parish are without access to vehicles versus 4.17% of white households.

Therefore, I would conclude that there are substantial socio-economic disparities between the black and white populations of Bossier Parish.

School Board's Proposed Plan Lack of Conformity with Redistricting Criteria

28. In the preparation of redistricting plans two of the most fundamental criteria that must be met in every plan are compliance with the one-person, one-vote doctrine and the contiguity of election districts. Except in unusual circumstances, every final election plan which a redistricting consultant prepares should have a total deviation of less than 10% in order to conform to the one person, one vote doctrine. The

principle of contiguity refers to the practice of having each unit of geography included in a district in an election plan connected by at least a part of one of its borders with part of one of the borders of another unit of geography in that same district. The usual practice is to have more than a mere point at this place of connection. There are virtually no exceptions to the doctrine of contiguity.

29. In order to calculate the total deviation for a plan, one must go through several steps using population information based on census data. First, the Ideal District Size must be calculated. This is done by dividing the total population of a jurisdiction by the number of seats on the legislative body. For Bossier Parish, the total population is 86,088. Dividing this figure by the 12 seats on both the Police Jury and the School Board yields an ideal size of 7,174 per legislative district. Then the analyst calculates the deviation for each district of the plan under consideration. This is calculated by subtracting the Ideal District Size from the actual District Population in the district and dividing that result by the Ideal District Size. This is then multiplied by 100 to get a percentage. The formula is as follows:

$$\text{Population Variance} = \frac{\text{District Population - Ideal Size}}{\text{Ideal Size}} \times 100$$

If the district you are inspecting has more people than the ideal size, the variance will be a positive number, meaning that this district is "underrepresented," while a district with fewer people will yield a negative number for its variance and is said to be "overrepresented."

30. The Total Deviation for the plan can be determined after one has calculated the Population Variance

for all of the districts. To calculate the total deviation, I identify the district with the largest positive variation and the district with the largest negative variation. I then convert the negative number into a positive one and add the two numbers together. For example, if the school district with the largest positive variance scored 3.65% and the one with the largest negative variance scored -4.1%, you would add the numbers and have a Total Deviation of 7.75%. This is the number that should be under 10%. The standard practice in the development of election plans is to keep the deviance range within +5% and Louisiana law (cite) states that this is what should be done to comply with the one-person, one-vote doctrine.

31. The police jury electoral plan adopted by Bossier Parish Police Jury which the School Board proposes to adopt as its election plan has a population deviation in excess of 10%. Mr. Joiner, who developed the plan, has testified that the total deviation is 11.75%. Counsel for the Defendant-Intervenors provided me with a GIS database for Bossier Parish given to them by Mr. Gary Joiner, redistricting consultant for the School Board. This database contains data on the election plan under consideration here and Bossier Parish population data as well as precinct boundaries. Using this database, I have determined that it is possible to make slight alterations to the current Police Jury plan so as to bring the deviation for that plan to within the 10% total deviation guideline. This can be accomplished by two easy steps. First, one simply rejoins the two of the three new precincts formed when Mr. Joiner split former precinct 2-18 between election districts 3, 4, and 6 as he created the 1991 Police Jury plan. By rejoining new precinct 2-18B with 2-18C and

putting all of this population in District 3, the District 3 population is closer to the ideal size, (7306 persons, deviation 1.84%) and is no longer the smallest district in the plan. The second step for getting under 10% is a bit more complex but is still not difficult to achieve. In creating Districts 8 and 5, Mr. Joiner found it necessary to divide old precinct 2-17 into 2 new precincts. New precinct 2-17A went to District 5, new precinct 2-17B was assigned to district 8, while new precinct 2-17C was put in District 4. Defendant-Intervenors' Exhibit 22 shows the current configuration of precincts 2-17A and 2-17B. The result was that District 5 had a population of 7607 and a deviation of 6.04%. If old precinct 2-17 is merely divided in a different manner, as is shown by Defendant-Intervenors' Exhibit 23, the populations of the two districts and their deviations are as follows: District 5 - 7219, deviation 0.65 % and District 8-7287, deviation 1.58%. After these simple changes, the deviation of the plan is reduced to 8.63%, based on Districts 2 and 6 which then have the extreme deviations with 4.84 and -3.79%, respectively. As further proof that it is possible to create a plan with a deviation under 10%, it should be noted that the election plans developed by the NAACP and the Knight plaintiffs all have a deviation under 10%. These elections plans are thus presumptively superior plans under the one-person, one-vote doctrine to the plan adopted by the School Board.

32. As noted above, contiguity is also a fundamental redistricting criterion. Recent analysis that I have performed on the above mentioned database obtained from Mr. Joiner reveals that District 9 of the Police Jury plan proposed by the School Board is not contiguous. Not only do the two portions of this district fail to have common borders with one another, they do

not even share common point as the closest two points of these parts are over 100 feet a part. Attached as Defendant-Intervenors' Exhibit 24 are maps showing this. The first map, Defendant-Intervenors' Exhibit 24A, shows all of District 9, the area in dark green, along with portions of other districts in that area of the parish. Defendant-Intervenors' Exhibit 24B is close up detail of that area showing that two segments of District 9, again the area in dark green, do not even connect. The GIS database and program show the distance between the two segments to over 100 feet. These two segments of District 9 are whole precincts—precincts which existed with the same boundaries in the previous plan but which were in a contiguous district due to the inclusion of another precincts [*sic*] in the previous plan.

33. All of the districts in the complete election plans submitted by the NAACP and the Knight plaintiffs are contiguous and in no instance is that contiguity accomplished by mere point contiguity. One of the exemplary districts submitted with my report, District 8A, part of Defendant-Intervenors' Exhibit 19, does have point contiguity, but that district was purposefully drawn to show what a district would look like that paid only minimal attention to traditional redistricting principles and sought to maximize the black voting age population in the district.

34. I have been requested by counsel, to use one of the alternative configurations of the majority black election district from the northern part of Bossier Parish, District 8C, that was part of Defendant-Intervenors' Exhibit 20, along with District 2 from the plan I developed in the *Knight* litigation, and created another alternative election plan for Bossier Parish. I

was asked to minimize the number of precinct breaks as I constructed this plan. The population characteristics of this plan are set forth in Defendant-Intervenors' Exhibit 25A. The total deviation of this plan is 9.16%. A map showing the configuration of this plan is attached as Defendant-Intervenors' Exhibit 25B and maps showing details around the municipalities are attached as Defendant-Intervenors' Exhibits 25C, 25D, 25E and 25F.

35. This new plan would require 27 additional voting machines, if no changes were made to the current precinct lines of Bossier Parish. It splits 24 precincts and would require that 9,270 persons of voting age to be assigned to the additional voting machines. Defendant-Intervenors' Exhibit 26 sets forth the data supporting this conclusions [*sic*]. If one used the precinct lines that were in effect before the 1991 redistricting of the Police Jury, only 22 precincts would have been split, with a total of 25 discrete splits. This is shown in Defendant-Intervenors' Exhibit 27.

36. Since precinct consolidation is possible under Louisiana law, I have also made a preliminary assessment of how the splits necessitated by this plan could be realigned into a smaller number of precincts. Defendant-Intervenors' Exhibit 28 shows that a precinct realignment based on this plan could result in as few as 46 precincts, three new precincts above the 1990 total, and a shift of 12,511 persons of voting age in new precincts. This precinct realignment is only an example. Different realignment configurations would be possible. These could result in either a smaller number of precincts or the reassignment of fewer people to new precincts. By contrast, the plan adopted by the Police Jury in 1991 had a total of 56 precincts, 13 above the

1990 total, and shifted 8,466 persons of voting age into different precincts. I did not have a detailed map showing current state legislative districts so this evaluation does not take into account state legislative districts, which could create the need for a few additional splits. It is clear, however, that a plan with two majority black districts could be adopted without significantly altering the number of election precincts in Bossier Parish.

37. I understand that the Bossier Parish School Board claims that it is unable to create any majority black district in the parish because that would require breaking existing precinct lines. It is not usual practice in the redistricting process, in my experience, to elevate the preservation of precinct boundaries over consideration of the one-person, one-vote doctrine, compliance with the Voting Rights Act, or redistricting principles such as compactness and contiguity. Precincts exist for the administration of voting. While it may raise administrative issues for precincts to be changed, or for different precincts to be used for election of different bodies, such as a school board and the police jury, those are issues that can be addressed by proper administration of the voting process, generally at modest or no cost, and I do not elevate such considerations over compliance with federal law in my work.

Cane v. _Worcester County_—Plaintiffs' Proposed District

38. As is indicated by my report in this case, I prepared the election plans submitted by the plaintiffs in *Cane* v. *Worcester County*, 35 F.3d 921 (4th Cir. 1994). The County's claim that the plaintiffs' configuration violated the doctrine of *Shaw* v. *Reno* was rejected by both the District Court and the United States

Fourth Circuit Court of Appeals. A copy of the plan submitted by the plaintiffs in that case is attached as Defendant-Intervenors' Exhibit 29A. Close-up views of the area around the three towns which have part of their population in the district are attached as Defendant-Intervenors' Exhibits 29B, 29C, and 29D.

Conclusion

39. A comparison of the sample alternative that the NAACP and I have drawn demonstrates that redistricting of the 12 single member district Bossier Parish School Board using 1990 Census can be accomplished so as to create two majority-black districts while achieving *superior* results on one-person , one-vote and contiguity principles, and while creating fewer, but certainly a similar number of, voting precincts.

I, William S. Cooper, do hereby declare, under the penalty of perjury, that, to the best of my knowledge, the foregoing information is true and correct.

April 8, 1995

/s/ WILLIAM S. COOPER
WILLIAM S. COOPER

[Referenced exhibits omitted from J.A. See Defendant-Intervenors Tab G: Exhibits 18-33 for originals]

Excerpts from Volume I of Trial Transcript in *Bossier Parish School Board* v. *Reno*, C.A. No. 94-1495 (D.D.C.), April 10, 1995

Testimony of Appellee's witness Barry Musgrove – Cross Examination by the Appellants

BY MS. SARDESON:

* * * * *

[41]

* * * * *

Q And you are aware, are you not, that Police Juries can change precinct lines once they have been established?

Basically I understand that, yes, ma'am.

Q. And there is certainly no state law requirement that would prohibit a School Board, just as any other member, or any citizen of Bossier Parish, for that matter, from requesting of the Police Jury that they change there [*sic*] precinct lines?

A. Restate, please?

Q. You are not aware, are you, of any state law requirement that would prohibit the School Board, or any citizen of Bossier Parish, from requesting that the – of the Police Jury that they change their precinct lines?

A. I am not aware of any such law, no, ma'am.

Q. And, in fact, that does, indeed, happen from time to time, are you aware of that?

A. I would assume so, yes, ma'am.

Q. So you would agree with me would you not, Mr. Musgrove, that there is no reason why a School Board could not develop its own redistricting plan, and if it split precincts, then go to a Police Jury with a request to reconfigure its precincts to accommodate that plan?

MR. THORNTON: Objection, Your Honor.

THE COURT: Overruled.

[42]

MR. THORNTON: She said –

THE COURT: Overruled. Overruled.

THE WITNESS: Ms. Sardeson, I am comfortable with addressing the Bossier situation, but I am not real comfortable addressing any other parish situation. I assume that any parish can do anything that they have a desire to do.

But in our situation, our initial hope was to jointly develop a plan between the two public bodies, and when that did not come to fruition, the Police Jury said that they were going to do their own thing, and when that went out the window, then we proceeded in the other direction of retaining Mr. Joiner.

BY MS. SARDESON:

Q. My specific question to you, and I will put that in Bossier Parish then. You are not aware of any state law requirement, are you, that would have prevented the School Board, the Bossier Parish School Board, from developing a redistricting plan, or discussing developing a redistricting plan that split precincts, and if it did that going to the Police Jury to—and requesting it to reconfigure the precincts to accommodate that plan?

A. Ms. Sardeson, my response would be that my understanding, and certainly I am not a lawyer, but my understanding was that that would have been possible if we [43] jointly worked on developing precincts, but that once the Police Jury established their lines, then we were obliged to operate within the precinct lines so established by their rules.

Q. So it is your understanding that the Police Jury can't split precincts?

A. Well, I have—I have two feelings on that. One, we operated under the premise that only they could—had the authority to split precincts. Since that time, you know, I have had information from several sources that perhaps the state law prohibiting the violation of precinct lines also applies to the Police Jury.

But at the time that we were negotiating or considering all plans, it was my understanding that the Police Jury was the only body that had the authority to violate precinct lines, yes, ma'am, or to redraw. Did I—am I answering your question?

Q. Was it your understanding—are you saying that it was your understanding during the time leading up to the School Board adopting the Police Jury plan that it was not possible for the School Board to go to the Police Jury and request that the Police Jury reconfigure its precinct plan?

A. Well, I personally did not know that that was an option until after our plan had been denied by the Justice Department.

[44]

Q. But you know that that is an option today?

A. That?

Q. Do you know that the option of going to the Police Jury to request that they reconfigure their precinct lines—

A. Yes.

Q. —was an option at that time? You understand that today?

A. Yes, ma'am.

Q. Okay. Now you also stated in your direct testimony that the Police Jury plan, in your opinion, was not the favored plan of the School Board at the time that the Police Jury first adopted it and it was first presented to the School Board?

A. Restate, please?

Q. You stated in your direct testimony that the School Board didn't automatically favor the Police Jury plan when it was first presented to the School Board?

A. That is correct.

Q. In fact you, yourself, didn't immediately favor that plan, did you?

A. No. I was hoping that we could derive our own plan.

Q. And did that hope include a twelve member board?

A. My personal opinion is that I would have liked to have seen our board reduced to nine, seven or five districts, but that was not the feeling of the majority of the board.

* * * * *

[47]

* * * * *

Q. In fact there was no discussion about the NAACP plan after Mr. Joiner said that it split precincts, isn't that true?

A. From my viewpoint, yes, ma'am.

Q. You also stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, we were further told that we were not permitted to gerrymander for racial purposes, is that correct?

[48]

A. Restate, please?

Q. You stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, and I quote from your direct testimony, we were further told that we were not permitted to gerrymander for racial purposes?

A. Well, if you are reading, then I assume that I said that. I believe that what I intended to convey is, again, violating of existing precinct lines by state law to gerrymander any district, whether it be for majority or minority purposes.

Q. Are you making a distinction between the precinct splitting problem and racial gerrymandering? Would you make a distinction between those two definitions?

A. Based on my knowledge I cannot make a distinction. Gerrymandering, my concept of the word is that it is an illegal use of precinct lines to configure a district that will favor either a majority or a minority situation. I have a hard time distinguishing between the two personally.

Q. Well, you stated earlier in your direct testimony that Mr. Joiner had told the board that there was a problem that the NAACP split its precincts, is that correct?

A. That is correct.

Q. And that you also stated that that was the reason why you—for you, the NAACP plan wasn't an alternative for the [49] School Board to adopt?

A. The night that it was presented, the president of the board at that time, David Harvey, asked Mr. Joiner to come in, and his response was that the plan was illegal because it violated numerous existing precinct lines that we had no authority to do. I might—may I?

James Bullers was the District Attorney who was acting as our counsel, also made the comment at that

time that he agreed that should we adopt that plan that we would be sued.

* * * * *

BY MS. BRANNAN:

[59]

* * * * *

Q. Mr. Musgrove, you identified the *Lemon* case as the district school desegregation case a few minutes ago. Isn't it true that you know virtually nothing about the school district's obligations in that on-going school desegregation case?

A. Yes. That is essentially true. I really had not heard about that case until we were called to Baton Rogue [*sic*] last year.

Q. You were called to Baton Rogue [*sic*] because my client sued the School Board to try to get it to adopt a legal redistricting plan?

A. Yes, ma'am.

Q. I would like to go back for a moment to this question of precinct splitting versus racial gerrymandering. Are you familiar with the old Bossier area of Bossier City in the parish?

A. In general, yes, ma'am.

Q. Isn't it true that in that area of Bossier City, if it weren't for the precinct issue, you think that a majority black district could probably be drawn without a [60] gerrymandering issue?

A. Restate, please?

Q. Isn't it true that in the old Bossier area of Bossier City, even if it weren't for the precinct issue, you think that a majority black district could be drawn without a gerrymandering issue?

A. If it weren't for the precinct issue?

Q. That is right?

A. Though I am not a demographer, I am aware that that area houses the most significant concentration of minority population, and as a lay person common sense would tell me that that would be as close a potential black majority district as could be constructed.

* * * * *

* * * * *

Testimony of Appellee's witness Thomas D. Myrick—Cross Examination by the Appellants

BY MS. SARDESON:

* * * * *

[73]

* * * * *

Q. You also said in your direct that there were two schools actually physically located in your district?

A. Yes.

Q. And that—both of those schools are up in Plain Dealing, are they not?

A. Yes. Plain Dealing Elementary School, and then Plain Dealing Middle School and High School are in one location.

Q. And both of those schools are predominantly black, are they not?

A. Yes.

Q. And in fact both of those schools are over 75 percent black?

A. I couldn't answer that. I do know that they are predominantly black.

Q. Again, it has been stipulated in this case that Plain Dealing Elementary is 77.7 percent black, and Plain Dealing [74] Junior and Senior High is 76.9 percent black.

A. I would not disagree with that.

* * * * *

[78]

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Q. But isn't it true, Mr. Myrick, that you actually participated in the Police Jury process?

A. No, absolutely not. I had nothing whatsoever to do with it.

Q. That, in fact, you met with Mr. Joiner, the Police Jury's demographer, in his office on five or more occasions during the Police Jury process?

A. I did not.

THE COURT: Where was his office?

MS. SARDESON: In Shreveport.

THE COURT: I asked—I didn't ask you.

MS. SARDESON: I am sorry.

THE COURT: Where was his office?

THE WITNESS: I do not know where his office is. I have never—

THE COURT: Have you ever been in Shreveport, Louisiana?

[79]

THE WITNESS: Yes, sir.

THE COURT: Have you ever been in his office?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

THE WITNESS: Absolutely.

* * * * *

[86]

* * * * *

BY MS. SARDESON:

Q. Mr. Myrick, you stated in your direct testimony that it was likely you who proposed, shortly after the Department of Justice precleared the Police Jury plan, proposed to the School Board that they adopt the Police Jury plan?

A. Yes.

Q. Just go ahead and—

A. It probably was. I know that I favored it. I don't recall specifically making the motion, but that was my position.

Q. And the reason for your position, was it not, that you were afraid that the members of the School Board were going to become embroiled in a political controversy over the fact that incumbents were pitted against each other?

A. My position was that this plan had been approved by the [87] department—or had been not objected to by the Department of Justice. It seemed expedient to say

that if this plan is acceptable, then why don't we accept it rather than become involved in discussions about minute changes in district lines.

It seemed a good way to say, we don't have anything else to worry about. This plan has been accepted, and we had no objection to it. And I will add, also, that a part of my thinking in the process was that it was more reasonable for the public to understand the district based on it being the same as the Police Jury.

In the past, prior to 1980 as I recall, the—both plans were the same, and the district designation was the same. Between 1980 and 1990 there was much confusion about which Police Jury district you lived in and what School Board, among the voters is what I am saying.

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[95]

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THE COURT: Sir, let me ask you this. You had this meeting with Mr. Joiner before the board, is that right?

THE WITNESS: Yes, sir.

THE COURT: And he showed you several different plans, or more than one, is that correct?

[96]

THE WITNESS: As I recall, sir, I think that it is.

THE COURT: Did any of those other plans cross precinct lines?

THE WITNESS: No, sir, I don't think so.

THE COURT: Did they vary from the Police Jury plan?

THE WITNESS: I am not certain about that. He showed us, Your Honor, that the districts—Mr. Joiner showed me what—the various things that could happen to my district. I did not look at the entire parish, the various other districts. He was showing - -

THE COURT: Each member?

THE WITNESS: Yes, sir.

THE COURT: Each member their parish [*sic*], and that was all that they were interested in?

THE WITNESS: In a sense, yes, sir. That was the primary concern.

THE COURT: Whether you could get reelected from your parish?

THE WITNESS: Whether it would affect my district and how.

THE COURT: That sounds like a member of Congress.

THE WITNESS: Yes, sir.

THE COURT: And you say that you don't recall whether that was at variance with the Police Jury plan, your [97] district boundaries?

THE WITNESS: Your Honor, they—to be very candid about it, I was impressed with Mr. Joiner's

ability to draw these maps with his computer. I had never seen that done before.

THE COURT: That isn't what I asked you, is it?

THE WITNESS: He showed—well, he had told us all along that he could not cross precincts. I think that perhaps he showed us some of the proposed other plans that did cross precincts.

THE COURT: All right. Supposing that they didn't cross precinct lines. Did it change the boundaries of your district?

THE WITNESS: Yes, sir.

THE COURT: And that was contrary to the Police Jury plan, was it not?

THE WITNESS: He showed other—

THE COURT: Just answer my question, and then you can explain.

THE WITNESS: Yes, sir.

THE COURT: And that would then have been contrary to Louisiana state law, in the view of your counsel at least?

THE WITNESS: No, sir. He did not show me a plan that crossed state–I mean precinct lines as a proposal for my district.

* * * * *

BY MS. SARDESON:

[105]

* * * * *

Q. Isn't it true that Mr. Price then brought his plan back before the board at the next School Board meeting on September 17th, 1992, do you recall that, the two presentations?

A. I think that that is correct.

Q. And isn't it also true that the School Board just dismissed the plan because of split precincts?

A. We chose to go with the Police Jury plan because it had [106] been approved by the Department of Justice.

Q. But it would be a fair statement, wouldn't it, in light of the comment that you just made, that you didn't even take—give the plan enough thought to find out where your own residence would be in that plan, that the School Board just summarily dismissed the NAACP plan when Mr. Price presented it?

A. I cannot speak for the whole board, but I did not summarily dismiss it.

Q. But the School Board didn't ask Mr. Joiner to conduct any further study on the plan after Mr. Price presented it, did they?

A. Mr. Joiner told us that the proposed NAACP plan split precincts. In fact he gave us a number, that I can't recall now, but it was a pretty high number.

THE COURT: Did anybody present to you during this period a plan whereby minorities would be in the majority of any election district without cutting precinct lines?

THE WITNESS: No, sir.

THE COURT: Nobody?

THE WITNESS: No, sir.

THE COURT: Including the NAACP or any other minority group?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

[107]

THE WITNESS: That is my understanding.

* * * * *

[109]

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THE COURT: Was Mr. Price a part of the redistricting process of the School Board of which you are a member?

THE WITNESS: He contributed on a number of occasions and provided a proposed plan.

THE COURT: Did they cut across precinct lines?

THE WITNESS: Yes.

THE COURT: What was the reason that they were rejected?

THE WITNESS: That was one of the reasons, Your Honor.

THE COURT: What were the other reasons?

THE WITNESS: The other reason, in my opinion, was that the district was configured in a real odd way, beginning at the Arkansas state line, and extending on down through the middle of the parish, and it created a School Board district that was not in accord with the previous practices.

Our—our procedure has always been for a School Board member to represent a certain area, and the districts that Mr. Price proposed flashed down through the middle of the parish and created a situation where a School Board member in Bossier City or the southern part of the parish would be representing people who attended a school and [110] resided in the northern part of the parish.

It would distance the voting public in a particular school attendance district from their School Board member, and that was my personal objection to it. And then we were informed that that plan could not be created with a black majority district without crossing precinct lines.

* * * * *

BY MS. SARDESON:

* * * * *

[114]

Q. And Mr. Price addressed the precinct split issue in the NAACP plan at the public hearing, did he not?

A. I have heard him address it, and I am not certain that it was at that particular time.

Q. In fact Mr. Price talked about the supremacy clause in his presentation, did he not?

A. I don't think that he used that term.

Q. Isn't it a fact, Mr. Myrick, that Mr. Price told the board that Mr. Joiner, the School Board's own demographer, had had conversations with the NAACP, and that Mr. Joiner had admitted that the use of the precinct law—the state—the Louisiana precinct law, if it impeded the creation of a black majority district, that that would constitution—constitute a violation of the Voting Rights Act, a constitution [*sic*] of federal law?

A. I don't recall that. I recall Mr. Price's statement to the effect that federal law supersedes the state law.

* * * * *

BY MS. BRANNAN:

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[127]

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Q. Mr. Myrick, I put back up what was marked as United States exhibit number 76-D, which is the proposed School Board plan, which is the current Police Jury plan?

A. Yes, it appears to be.

Q. Which district does Tommy Scarborough represent?

A. The blue one.

Q. That is the same as the one that you would be in if the court approves this plan for the School Board—

A. Yes.

Q. —is that correct?

A. Correct.

Q. And which district is Rick Avery in?

A. I couldn't tell you. I have no idea. I can—

Q. I am sorry, go ahead.

A. I think that I know—I couldn't answer that. I thought that I could tell you where he lived, but I don't — I am not certain of that.

Q. Mr. Myrick, would it help you to remember the conversations that Ms. Sardeson was asking you about with Mr. Joiner during the Police Jury process in which she asked if you were involved, if I were to suggest to you that Rick Avery and Tommy Scarborough were involved some of those conversations as well?

A. With me?

[128]

Q. And with Mr. Joiner during the Police Jury redistricting process?

A. No.

Q. Would it help—

A. That is not true.

Q. Does it help you recall those conversations if I suggested that in paragraph eight-five of the stipulations that your counsel has stipulated that on those occasions you were accompanied by at least two Police Jury members, Rick Avery and Tommy Scarborough, all of whom represent districts, portions of which could be used to create a black majority district north of Bossier City?

A. I never met with a member of the Police Jury. I never discussed the plan with them. I have never met with Mr. Joiner outside a School Board meeting to discuss this reapportionment plan.

* * * * *

Testimony of Appellee's witness Gary D. Joiner—Cross Examination by the Appellants

BY MR. MULROY:

[135]

* * * * *

Q. And you incorporate that input from your employers when you are drawing the plan, isn't that correct?

A. Yes.

Q. You don't inject your own personal preferences into the plan, do you?

A. No.

Q. So when you are drawing a redistricting plan, you follow the instructions of the government officials who employ you, [136] that is fairly stated, correct?

A. Yes. Unless—occasionally something happens when an elected official will ask me to do something that is just totally improper, and it happens rarely, but it does happen occasionally.

Q. And you advise them of all of the relevant state law requirements?

A. Yes.

Q. And you also advise them of all relevant options for redistricting under state law, isn't that correct?

A. Yes.

Q. Now, you had these meetings with small groups of individual incumbents during the Bossier Parish Police Jury redistricting process in 1991, correct?

A. Yes.

Q. And it has been stipulated to by the parties in this case that these meetings were not open to the public. Now let me ask you this question about these meetings. School Board member Thomas Myrick, one of the plaintiffs in this case, attended some of these meetings, did he not, during the Police Jury process?

A. Listening to testimony – if I could I would like to explain what I remember.

THE COURT: Answer the question.

THE WITNESS: I met with certain School Board [137] members, talked to them. Most of the Police Jury members came to my office, two or three at a time.

BY MR. MULROY:

Q. And Thomas Myrick –

A. I met with Mr. Myrick, and I thought that it was at my office. It may not be. I am not – I am not really sure about that, at my office.

Q. He met with you during the Police Jury redistricting process, correct?

A. I met Mr. Myrick.

Q. And discussed redistricting during the Police Jury redistricting process, isn't that correct?

A. But not in the School Board process, the Police Jury process for the Police Jury, and there is a difference.

THE COURT: There is?

THE WITNESS: Yes, sir.

THE COURT: Oh, might be.

BY MR. MULROY:

Q. So your testimony then, if I can understand it correctly –

A. Can I expand on that?

THE COURT: No. Answer questions.

BY MR. MULROY:

Q. Your testimony then is that School Board member Thomas Myrick met with you during the Police Jury redistricting [138] process to discuss the redistricting for Bossier Parish, is that fairly stated?

A. For the Police Jury, and he was certainly aware of it. Yes, I would say yes to that.

Q. Now, you did testify at deposition, did you not, that he met with you some five times in your office, did you not?

A. I don't recall. I certainly met with Mr. Myrick at various times, and other School Board members. I don't recall saying in my office. Maybe I did. I don't – of course I had almost twenty hours of deposition, too. I may have.

Q. Well, you did take a deposition in this case, is that correct, Mr. Joiner?

A. Yes, sir.

THE COURT: Just a minute, counsel. Witnesses don't take depositions. Witnesses submit to depositions.

MR. MULROY: I stand corrected.

THE COURT: Now let me show you how to do it. Bring it up here.

MR. MULROY: Bring the deposition transcript?

THE COURT: Yes.

MR. MULROY: Thank you, Your Honor.

THE COURT: Do you recall your deposition being taken on October 14, 1994?

THE WITNESS: Yes, sir.

[139]

THE COURT: In this case, by Mr. Gary Joiner?

THE WITNESS: Yes, sir.

THE COURT: And you were under oath at that time, were you not?

THE WITNESS: Yes, sir.

THE COURT: And that was in the case of Bossier–

MR. MULROY: Bossier, Your Honor.

THE COURT: Bossier Parish School Board versus Jane [*sic*] Reno and others in this case, right?

THE WITNESS: Yes, sir.

THE COURT: Now at any time following the redistricting process for the Police Jury, did you have any discussions with any other member—any member of the School Board?

THE WITNESS: Yes, Sir.

THE COURT: With whom did you have such discussions?

THE WITNESS: When I went before the School Board, I certainly discussed that with every member of the School Board. I recall having conversations with both Mr. Myrick and with Mr. Musgrove, and with the staff of the School Board.

THE COURT: Is it your testimony today that Mr. Myrick did not come to your office?

THE WITNESS: No, sir, it is not.

[140]

THE COURT: What is your testimony? Did he come to your office or didn't he?

THE WITNESS: I believe that he did. I certainly do. I couldn't tell you the dates, Your Honor. I am not sure about that.

THE COURT: The question that you discussed with Mr. Myrick in your office was the district boundaries that had already been created for election of the School Board before there was a vote, isn't that right?

THE WITNESS: I don't recall that, Your Honor. For the School Board?

THE COURT: For the Police Jury?

THE WITNESS: For the Police Jury. That would have made sense, yes.

THE COURT: Do you recall how many meetings that you had with Mr. Myrick?

THE WITNESS: No, sir, not offhand, but I would assume that over the course of the project probably half a dozen.

THE COURT: Ten?

THE WITNESS: It could be. I really didn't keep records of who I spoke with on any– at any given time.

THE COURT: All right. Did you have occasion to call him and seek him out?

THE WITNESS: I do not recall calling him. I [141] typically work through staff.

THE COURT: Did he ever have occasion to call or contact you directly?

THE WITNESS: Yes, sir. I believe that he did on at least one occasion. Yes. I will answer that yes.

THE COURT: When he came to see you was he concerned about his own district alone?

THE WITNESS: I would say that I have never been in a meeting with an incumbent when they were not concerned about at least where their boundaries were. And I would say that that would extend to Mr. Myrick.

THE COURT: He was concerned about his own district?

THE WITNESS: I would say so, yes. Whether he said that verbally or not, I don't know.

THE COURT: And he came to see you what the jury – the Police Jury plan would look like in terms of its boundaries?

THE WITNESS: I would say so, yes.

THE COURT: And he left you with the impression that the Police Jury plan would ultimately be the School Board plan, right?

THE WITNESS: Yes, sir.

THE COURT: Did you have any occasion to discuss with Mr. Myrick, or Mr. Jerome Darby, the Police Jury plan?

[142]

THE WITNESS: Yes, sir. I certainly spoke to Mr. Jerome Darby about it on several occasions.

THE COURT: Did either of them ever have any– give you any indication that they wanted a black majority district?

THE WITNESS: No, sir.

THE COURT: As a matter of fact they indicated just to the contrary, didn't they?

THE WITNESS: Yes, sir. In the context –

THE COURT: You answered my question.

THE WITNESS: Okay.

THE COURT: On how many occasions did you talk with Mr. Darby?

THE WITNESS: Several. I don't remember how many, but several. Both in meetings, before and after meetings, at my office. And by telephone.

THE COURT: Now wait a minute, sir. Did you have any individual conversations with members of the Police Jury about the drawing of black majority districts?

THE WITNESS: Individual conversations?

THE COURT: No. Any conversations with individual members of the Police Jury about drawing black majority districts?

THE WITNESS: Not that I recall.

THE COURT: All right, counsel. You can have this [143] back.

MR. MULROY: Thank you, Judge.

BY MR. MULROY:

Q. If I may just quickly follow up on one point that you just made, Mr. Joiner, as Judge Richey was questioning you. Police Juror Jerome Darby during the Police Jury redistricting process is a black Police Juror, is that correct?

A. Yes, he is.

Q. Mr. Darby didn't affirmatively tell you that he opposed the creation of a black majority district during the process, did he?

A. Oh, no.

Q. In fact he did ask about the possibility of creating a black majority district, did he not?

A. It was more involved than that.

Q. But the answer would be yes, he did ask about the possibility of creating a black majority district, is that correct?

A. Yes. The answer to that would be yes.

* * * * *

[149]

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THE COURT: I asked you, what was the highest percentage of African Americans in a proposed district that you generated on your computer when considering alternatives for elections to the School Board?

THE WITNESS: In a complete plan it was probably not over thirty percent, thirty or forty percent.

THE COURT: How about Police Jury?

THE WITNESS: The same. I doubt that it was that high.

THE COURT: Would it be higher in the School Board? They are the same, aren't they?

THE WITNESS: Yes, they are. It would be the same.

THE COURT: Okay. So you got up to thirty or forty percent?

THE WITNESS: Maybe.

THE COURT: Well, maybe. Do you know? You did it, didn't you?

THE WITNESS: Yes, sir, but it has been a long time, and those plans were destroyed in a computer catastrophe in my office.

THE COURT: Well, did you give them—what program did you use? Autocad, or Word Perfect, or Microsoft Word, or what?

[150]

THE WITNESS: No. I used Geodistrict from Geographic Data Technology, and GIS Plus from Caliber Corporation, and the problem was that I was backing it up, so my back up was blown away when my—

THE COURT: Your back up was what?

THE WITNESS: My back up sort of self destructed.

THE COURT: Was it on tape or diskette?

THE WITNESS: Yes, sir, it was on tape.

THE COURT: What about the hard drive?

THE WITNESS: It went down, too. We had a power failure at the worse possible moment.

* * * * *

[151]

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MR. MULROY: And just for the purposes of clarification, Judge, the United States does not dispute that it is impossible to draw two black majority districts to actually - -

THE COURT: Impossible did you say? You don't want to dispute the fact that it is impossible to draw two black [152] majority districts.

MR. MULROY: Without splitting at least a single precinct. We do not dispute that in order to go from the forty-five percent range up over to the fifty percent range for the two districts that it might be necessary to split a single precinct. It is our contention that there are ways for School Boards in Louisiana, including this School Board, to handle that situation, and that—

THE COURT: Without—by means of splitting just—not more than one precinct, is that right?

MR. MULROY: No. Actually Judge it is our—

THE COURT: How many precincts are going to have to be, quote, split, unquote?

MR. MULROY: To get one black majority district in the City of Bossier, fourteen.

THE COURT: All right. How many to get two?

MR. MULROY: Twenty-seven.

THE COURT: All right. Do you agree with that?

THE WITNESS: Yes, sir.

THE COURT: Are you the source of that information?

THE WITNESS: No, sir. They had someone else do it, but I verified it.

THE COURT: And you verified it on your computer?

THE WITNESS: Yes, sir.

THE COURT: Even though it crashed you still
[153] remember?

THE WITNESS: That is after that.

* * * * *

BY MR. MULROY:

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[155]

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Q. Would you agree with the statement that any plan at all, whether black majority districts or not, which

any significant way deviated from the Police Jury plan, would inevitably split at least one precinct somewhere?

A. I haven't done a test to test all of them. I don't think—I don't think that you—I know that you could not have another plan that was as strong as this one without splitting precincts.

[156]

Q. How long would it have taken you to figure out whether any other alternative, which is significantly different from the Police Jury plan, in any way, black majority or otherwise, was possible without splitting precincts?

A. Several hours at least.

Q. Several hours?

A. At least.

Q. All right. Now, when the School Board—strike that.

When the School Board began its redistricting process, it didn't consider it a foregone conclusion from the git-go that it would adopt the Police Jury plan during its 1992 process, is that correct?

A. That is correct, they did not.

Q. In fact it actively considered the idea of going with another plan, correct?

A. Yes.

Q. Indeed when the School Board first hired you in May of 1991, didn't you estimate that your redistricting work would take 200 to 250 hours?

A. If they wished to pursue another course, yes.

Q. Doesn't it necessarily follow that from the start the School Board was at least considering the idea of adopting a plan which split at least some precincts?

A. No.

Q. Now, as one of the reasons that the School Board has [157] given in this case for adopting the Police Jury plan over alternatives which provide black majority districts, the School Board stated that it had no authority to change precincts, is that correct?

A. Would you repeat that, please?

Q. Sure. When the School Board gave a reason for not adopting—for adopting the Police Jury plan over alternatives which provided minority districts, one of the reasons that it gave was that it had no authority to change precincts, is that correct?

A. Yes. Under Louisiana statute seventeen seventy-one three E two B, I think.

Q. And for that reason it did not give consideration to the NAACP plan as a viable plan, is that correct?

A. That is correct.

Q. But it has been stipulated to in this case that it is quite common for parish School Boards in Louisiana to draw a redistricting plan different from respective Police Jury redistricting plan.

In fact, isn't it true that you testified at deposition that out of the nine plans that you have worked—nine parishes in which you have worked in which the School Board and the Police Jury had the same number of districts, five had different plans?

A. Yes, that is correct.

* * * * *

[165]

* * * * *

Q. Let me ask you this question. It was your practice to fully inform your clients, including the School Board, about all options that they would have, including options regarding the changing of precinct lines, is that correct?

A. Yes.

Q. And that would include—strike that.

Louisiana law provided, did it not, that after January 1st, 1993, precinct consolidations, putting them together, could be made, reducing the number of precincts in the parish parish-wide, and quote, substantially, unquote, reducing election costs, is that a fair statement?

A. That is true. As a matter of fact, I am currently engaged in a project with the Police Jury to consolidate precincts.

Q. But they haven't finished consolidating precincts yet, have they?

A. No, they have not.

Q. And it has been what, four years since the Police Jury originally passed this plan?

A. There was a moratorium on precinct—on changing any precinct lines in the State of Louisiana for approximately two years. January 1st, 1994, they can change them, and it will go on until just before the next Census.

[166]

Q. Didn't you just testify that after January 1st, 1993, precinct consolidations could be made?

A. It could be 1993. There was a moratorium for about two years.

Q. So it has been two years, and the Police Jury still hasn't bothered to consolidate these precincts, is that right?

A. It is totally up to the Police Jury.

Q. If election costs were really a big concern on this precinct issue, it would be in the Police Jury's and the School Board's interest to reconsolidate precincts as fast as possible, right?

A. Part of the problem—yes. Part of the problem is this procedure.

Q. You answered my question, yes. Do you need to explain your answer, or is it yes?

A. I would like to. I would say yes, and I would also like to explain.

Q. So in order to answer the question whether or not it would be in the Police Jury's and School Board's

interests to reconsolidate as soon as possible, yes is not sufficient, you would need to explain that?

A. I would like to.

Q. Please.

A. Certainly it is in their best interest, because it [167] reduces the cost of elections. The average costs of elections per precinct in the State of Louisiana is between $850 and $900. According to the Commissioner of Elections Office.

If the Police Jury in Bossier Parish goes ahead and consolidates precincts as they are now, and this case is still pending, then it would be a wash. It would be a useless waste of public money.

Q. Well, since you raised this figure of how much election costs are per precinct, let me ask you a question about that. School Board elections in Bossier Parish are usually held in the fall of even numbered years, correct?

A. Okay. I will go along with that.

Q. And that is when congressional elections are held, correct?

A. Yes.

Q. You testified that election costs are about $800 per precinct for elections, is that correct?

A. That is what the State of Louisiana told me.

Q. But you did not communicate—strike that.

Isn't it true that that figure includes the costs that are borne by the State of Louisiana?

A. Yes. If the State of Louisiana participates in the election. Now it is possible that the School Board elections may be held at a different time.

[168]

Q. If the School Board elections—the School Board elections would normally be held at the same time as congressional elections, we just agreed to that, is that correct?

A. Yes.

Q. Now, isn't it true that under Louisiana law that at least half of the cost of such elections are borne by the State of Louisiana?

A. It depends entirely on the number of races being held. There is a formula, and I am not aware of the formula. I cannot recite the formula, but yes, you are right, they do get state assistance. There is currently a bill on [*sic*] the Louisiana state legislature that may prohibit a certain amount of that if it passes.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of certain Louisiana statutes regarding election expenses, and just what the formula is that Mr. Joiner is referring to. For the purposes of notifying counsel, opposing counsel, I am refer [*sic*] to Title 18, Sections 14.1(a)—1400.1(a), 1400.2(a), and 1400.3 (a), and without belaboring the point further, I would simply like to ask permission to approach to give this statute to the Clerk.

THE COURT: Without objection you may do so.

MR. MULROY: Thank you, Judge.

[169]

MR. THORNTON: Do you have a copy for me? I didn't bring my entire statute.

THE COURT: You can get it up in the library.

MR. THORNTON: Louisiana statutes?

THE COURT: Sure.

MR. MULROY: I would be happy to do that, Mr. Thornton.

THE COURT: We have every state code in the country here.

BY MR. MULROY:

Q. You said before that you could have a single, just a single black majority district inside Bossier City by creating only fourteen new precincts, right?

A. Yes.

Q. And it would also be the case that in such a case the precincts would be all within Bossier City, primarily along the river, isn't that what you testified to?

A. I believe that that is correct.

Q. Isn't it also true that one polling place can be used for two different precincts in Louisiana?

A. Yes.

Q. And that is such a case Louisiana law allows the parish to reduce the number of polling place officials to as low as two commissioners per precinct?

A. It is up entirely to the Commissioner of Elections [170] Office.

Q. Isn't it actually up to the parish—

THE COURT: He is probably a friend of Governor Edwards.

THE WITNESS: Soon not to be Governor Edwards.

BY MR. MULROY:

Q. Isn't it actually up to the Parish Election Board?

A. They can—the Registrar of Voters and the Clerk of Court maintain most of that information. I am not either one of those, so I would rather not testify to that.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of some other Louisiana statutes that describe this issue and establish that in such a case—first of all, you can consolidate polling places across precincts, and that in such a case you can reduce the number of polling place officials to as low as two commissioners per precinct.

THE COURT: Very well.

MR. MULROY: The statute—

THE COURT: Without objection it will be received.

MR. MULROY: Thank you.

THE COURT: Next?

BY MR. MULROY:

Q. These measures that I am talking about would reduce election costs, would they not?

[171]

A. If they were implemented, yes. However, just because you combine two polling places in one precinct does not mean, arbitrarily, that you reduce total costs, because you are probably going to have a machine for each precinct. So you would have machine costs, too.

Q. Did the School Board direct you, prior to October 1st, 1992, to do a comprehensive study of these issues to see just how much election costs could be reduced?

A. No. Because it varies, and no, they did not.

Q. Now, isn't it further true that you can implement precinct splits by using additional voting machines, or by using lockouts on voting machines?

A. You can use lockouts, but it depends on the quality and age of the machine.

Q. Now as to the use of these additional voting machines or lockouts, these are measures which need only be taken when there is a School Board election under this scenario, correct?

A. In the simplest terms, yes.

Q. And assuming that School Board elections are held once every four years, there are going to be at

most two more elections between now and the next redistricting, isn't that fairly stated?

A. Yes.

* * * * *

Excerpts from Volume II of Trial Transcript in *Bossier Parish School Board* v. *Reno*, C.A. No. 94-1495 (D.D.C.), April 11, 1995

Testimony of Appellee's witness William T. Lewis—Cross Examination by the Appellants

BY MS. BRANNAN

[8]

* * * * *

Q. How many regular high schools are there in Bossier Parish?

A. Six.

Q. And one of them, Plain Dealing Senior High School is seventy-nine percent black according to that report?

A. Close.

Q. So by drawing six attendance areas and maintaining those in the school district, you come up with a school that is seventy-nine percent black?

A. Correct.

Q. And that high school is up here in Plain Dealing in Mr. Myrick's district?

A. Correct.

Q. How many regular elementary schools are there in Bossier Parish?

A. There are sixteen.

Q. And there are also attendance areas for elementary schools?

A. That is right.

Q. And four of those school are predominantly black aren't they, Mr. Lewis?

A. Correct.

[9]

Q. And those are Bossier and Butler Elementary?

A. Right.

Q. And those are down in the City of Bossier?

A. Correct.

Q. Which is down in this area which is marked with the district seven and eight area on U.S. exhibit 76 D?

A. Correct.

Q. And Plain Dealing Elementary also is predominantly black?

A. Correct.

Q. And that is back up here in Plain Dealing in Mr. Myrick's district?

A. Right.

Q. And Plantation Park Elementary is also predominantly black, is it not?

A. I am not going to say offhand that it is, but it is close.

Q. All right. So by drawing sixteen attendance areas and maintaining those for elementary schools, you come up with three or four that are predominantly black?

A. Yes.

Q. And the reason for that is it not, Mr. Lewis, that when you—when you divide these areas, it is the composition of the neighborhood or community that dictates the racial composition of the school in your view?

[10]

A. We believe in the neighborhood school system.

Q. All right. Now the assignment of faculty and staff to schools is in your control, is it not, or that of the school district?

A. That is correct.

Q. It doesn't depend on where they live, or their neighborhoods?

A. No.

Q. And after that report that you signed and made to the court, your full-time teaching staff, including principals and assistant principals, was just under ten percent African American?

A. That is correct.

Q. And by the way, can I call these teachers as a form of short reference, which I believe is the practice that you follow in that report?

A. Correct.

Q. Let's talk for a moment about the assignment of teachers to those majority black schools that we identified a few minutes ago. Plain Dealing Middle and Senior High School at that time had sixteen white teachers and twelve black teachers, which made the teaching staff there over forty percent black?

A. Right.

Q. And that is more than four times the district-wide [11] average?

A. Correct.

Q. And Bossier Elementary had six white and five black teachers, which made that composition about sixteen percent black?

A. Close.

Q. And Butler Elementary had four white teachers and ten black teachers, which made that composition over seventy percent black?

A. Correct.

Q. And that is seven times the district average?

A. I agree with you. I mean I am not disagreeing with what you are saying. That is probably true.

Q. Well, you are welcome to reference the report if you have any doubt about my numbers, Mr. Lewis. You believe—this is not an accident is it, Mr. Lewis?

A. No.

Q. These are deliberate—these proportions are deliberatively assigned by the Bossier Parish school district?

A. Between the school and the principal—between the district and the principals, yes.

Q. And isn't it true, Mr. Lewis, that at your deposition that one of the reasons that you gave for putting black teachers together in concentrations in schools over their representation generally on your staff is that—

[12]

MS. BRANNAN: And I quote, Mr. Thornton, from page seventy-eight of the deposition.

BY MS. BRANNAN:

Q. —that black teachers sometimes feel uncomfortable when there are not many other black teachers at a school with them, and they feel more comfortable when there are others, isn't that correct?

A. That is not the primary reason. That is a reason, but that is not the primary reason.

Q. And you believe that the primary reason that you think that the black community wants role models in the form of black teachers—

A. That is correct.

Q. —in their schools.

A. They have expressed that to us many times.

Q. And so you deliberately respond to that request of the black community by disproportionately assigning black teachers to black schools?

A. That is correct.

Q. Mr. Lewis, isn't it true that an early order of the court in the *Lemon* case required the Bossier District to maintain a Biracial Committee?

A. Yes.

Q. And it was to be comprised of black and white community members?

[13]

A. Yes.

Q. And to recommend to the School Board ways to achieve and maintain a unitary status and improve education?

A. I don't know that that was the original intent, but I am assuming that it was, to make sure that we did maintain the proper rules and regulations.

Q. That committee stopped meeting in 1976, didn't it?

A. Correct.

* * * * *

[15]

* * * * *

Q. Isn't it true, Mr. Lewis, that in this document that you [16] submitted to the court in the spring of 1994, under section 9-A there you reported, and I quote, the Bossier Parish School Board does have a Parish Biracial Committee available?

A. That is correct.

Q. And that wasn't true, was it?

A. Well, it just wasn't active. It doesn't mean that it was disbanded. It just wasn't active.

Q. Well, it hadn't met since 1976 except for the few short meetings that we just discussed in early 1993, isn't that true?

A. That is correct.

* * * * *

Testimony of Appellee's witness William T. Lewis—Redirect Examination by the Appellee

[21]

* * * * *

BY MR. THORNTON:

Q. The court asked you, Mr. Lewis, about attendance zones. When you draw—

THE COURT: Now you are interjecting a new term of art.

MR. THORNTON: Attendance lines.

THE COURT: Whatever.

BY MR. THORNTON:

[22]

Q. When you draw attendance lines, do you also give those to the federal courts?

A. Yes, sir.

Q. All right, sir. That is a part of the obligation, and that is done?

A. Yes, sir.

Q. Have you had anybody complained about [sic] those lines?

A. No, sir.

Q. As a matter of fact, in the *Lemon* suit that you were asked about, Mr. Lewis, have you been sued, or

had motions or petitions filed against the Bossier Parish School Board over the last ten, twelve or fifteen years?

A. No, sir.

Q. Now, you were asked about the black teachers, and you said that somebody had suggested that black teachers out to be assigned to black schools to serve as role models for the young students, is that correct?

A. That is correct.

Q. Who has asked you to do that?

A. Mr. Price and other groups of the black community. They felt like, and I feel the same way, that black kids need good black role models. And the people in Plain Dealing, for example, would go crazy if we took all of their black teachers out of that school and spread them out throughout the parish, because the school is majority black.

[23]

Q. So you were doing this because someone in the black community was saying that that is what the black community would like for you to do?

A. Yes, sir.

Q. All right. Now the court asked you a question about some of the schools that are very predominantly black. It didn't ask you the question that I would like to ask you. Is it not a fact that there are some private schools that opened up in some of those areas?

A. Yes, sir.

Q. And that the private schools are predominantly if not all white?

A. Yes, sir.

Q. Is there anything under the law that you can do about that?

A. No, sir.

Q. Now, you have tried to recruit black teachers, have you not.

A. Yes, sir.

Q. Would you tell the court, if it is true, that you have tried harder to recruit black teachers than white teachers?

A. That is correct we have.

THE COURT: Why?

THE WITNESS: Why? Because we need black teachers in our school system. We need good black role models for our [24] black kids. They need someone to look up to.

I was personnel director for Bossier Parish for six years, from 1980 to 1984. When I would go to the colleges and universities throughout Louisiana, Texas, Mississippi and Arkansas, you would find 120 to 130 teachers graduating every year. A large number of those people being black. Today you go to them, you don't find many people in education any more. They are just not going into it.

The black—the young black people have greater opportunities in other places rather than teaching now, and our salary scale in Bossier Parish—we are actually a bedroom community for Shreveport. Most of the people work in Shreveport, and a lot of them live over there, but they have a tax basis quite a bit greater than ours. Therefore, they pay anywhere from three to $5,000 a year more than what we can.

We can't hang on to our good black teachers in our parish, because they will go over to where they can make the most money. You can't blame a kid coming out of college for wanting to go where the money is. Their start—the difference between our pay and what they make is more than what I made when I started for a year.

So there is quite a bit of difference in today's society. Money is the key to a young person as far as their goals are concerned. And so they are going to go to a school

[25] system where they can make more money than they will teaching in Bossier Parish. Although we have got the best school system in the state, they are still going to go where the money is.

THE COURT: What was your pay?

THE WITNESS: When I started teaching?

THE COURT: No, as superintendent?

THE WITNESS: As superintendent, 65,000, and the man across the river makes over 100,000. So there is quite a bit of difference there. Of course they have got more students than we do. They have got about 55,000, we have got about twenty-two. So there is a difference.

I wouldn't swap with him for anything. We have got a better school system than anybody else.

THE COURT: What are the SAT scores?

THE WITNESS: We don't give the SAT. We give the ACT scores, and it ranks nationally with the national results, close to the national results.

BY MR. THORNTON:

Q. Have you ever asked any of the members of the black community in Bossier Parish to help recruit black teachers?

A. Yes, sir, we have.

Q. Who? Who have you asked?

A. We have asked Mr. Price and other people. Mr. and Mrs. Harry have gone before. Mr. and Mrs. Martin. People in the [26] community.

People that used to work for the school system. One of the things, and I kind of resent this, because I have never had a lot of difficulty relating to people when I was in personnel, but they said that a white person could not recruit a black teacher to a school system.

Well, in order to try to help in that light, we have black administrators, or supervisors, or principals, or whatever, and community members, to go along with us to help recruit, and we still do not get the numbers that we would like.

Now, we get four or five black teachers every year, but we have four or five leaving every year to go next door to teach. As a matter of fact, after school started this year, the school system next to us took four of our black teachers from one of our black schools.

I can't do anything about that. It is their choice to leave. And for us to try to get someone to come in then and take their place, they are not there. So it gives us a very difficult problem. I mean it is a terrible situation for us to be in knowing what we want to do and not being able to do it. And we want good role models for our black kids.

* * * * *

Testimony of United States Government's witness Jerome Darby—Cross Examination by Appellee

[38]

* * * * *

BY MR. THORNTON:

* * * * *

Q. I have just a few questions to ask, if you please. You are a member of the Police Jury of Bossier Parish, are you not?

A. Yes, sir.

Q. You first ran for that office in what year?

A. 1983.

Q. And was that in a district under the old plan that was in existence from the 1980 to the 1990 census?

[39]

A. Yes, sir.

Q. All right, sir. And when you first ran in 1983, did you run from a district that had a majority white population?

A. Yes, sir.

Q. Do you remember the composition, racially, of that district?

A. The composition was about thirty, thirty-seven percent black.

Q. All right. A little— all right, thirty-seven percent. And in 1983 when you ran for that post, how many opponents did you have, and what were their racial designations?

A. Excuse me?

Q. Who did you run against?

A. The incumbent who was black, and also a white opponent.

Q. The black opponent was Johnny Gipson, was it not?

A. Yes, sir.

Q. That is G-i-p-s-o-n, isn't it?

A. Yes, sir.

Q. And he had been elected before you to the Police Jury?

A. Yes, sir.

Q. So in that district you took on the incumbent and another white—and a white candidate?

A. Yes, sir.

Q Allright, sir. Did you win that race?

A. Yes, sir.

[40]

Q. Now, was race an issue in that political campaign?

A. Was it an issue?

Q. Yes. Did you make it an issue?

A. No, sir.

Q. Do you know of anybody else who made it an issue?

A. Yes, sir.

Q. Who?

A. My white opponent.

Q. All right, sir. But you won anyway?

A. Yes, sir.

Q. All right. Now you ran again in 1987, did you not?

A. Yes, sir.

Q. Who were your—the same district? From the same district?

A. Yes, sir.

Q. Was the composition—the racial composition roughly the same again, about thirty-seven percent black?

A. Yes, it was.

Q. And against whom did you run?

A. The same two opponents.

Q. Mr. Gipson?

A. And Mr. McDaniels.

Q. And McDaniels, all right. And who won that race?

A. I did.

Q. Okay, sir. Now the Police Jury then reapportioned, and [41] you ran under their present plan, which is also the same redistricting proposal of the School Board, is that correct?

A. Yes, sir, that is correct.

Q. You ran in 1991?

A. Yes, sir.

Q. All right, sir. Who were your opponents?

A. I was unopposed.

Q. You filed and no one ran against you?

A. Yes, sir.

Q. So you swept into office without opposition?

A. Yes, sir.

Q. Now then, sir, do you—how many seats do you believe that African Americans or blacks ought to have on the Police Jury or on the School Board?

A. At least two to three.

Q. Why, sir?

A. One is because of the fact that by me being—serving the Police Jury for three terms, I have never been able to get white support, regardless. No matter how qualified I am, my white colleagues never support me, under no circumstances. I felt that if we had atleast two to three minorities on the Police Jury that it would definitely be a lot different.

Q. Do you believe that you are entitled to two or three because of the proportion of African Americans to the entire population?

[42]

A. Yes, sir.

Q. All right. Has somebody told you that the Voting Rights Act provides that you should be elected to office as a race in proportion to your numbers to the population?

A. Yes, sir.

* * * * *

[44]

* * * * *

Q. Mr. Darby, I am showing you an exhibit. It is number 5, I think. It is on the blue there, Mr. Darby. What exhibit do I call it? Exhibit number—exhibit

number 5. Now, that exhibit purports to be the minutes, an extract of the minutes of a Police Jury meeting in January of 1994. Would you read it, sir or have you read it?

A. The top?

[45]

Q. Just read it to yourself right quickly. Did you attend the Police Jury meeting?

A. Yes, sir.

Q. The Police Jury meeting was, in part, a meeting about whether it wanted to redraw its plan, and there is some controversy about what it is saying, but do you recall that meeting?

A. Yes, sir.

Q. All right. And in that meeting, the Police Jury of Bossier Parish decided what?

A. That it stood by its original reapportionment plan.

Q. Okay. And it even quotes you as stating that you are concerned that if the Police Board and Police—the School Board and the Police Jury have different district lines, it would be confusing to the citizens of Bossier Parish?

A. Yes, sir.

Q. Did you make that statement?

A. Yes, sir.

Q. All right. However, Mr. Darby indicates that he supports the Police Jury's original plan, is that correct, sir?

A. Yes, sir.

Q. Did you say that?

A. Yes, sir, I did.

Q. So the minutes are accurate?

[46]

A. That is accurate.

Q. And that was as late as January 11, 1994, was it not?

A. Yes, sir.

Q. Do you still stand by those statements?

A. That I support the Police Jury plan as of now?

Q. Yes?

A. No, sir. May I explain?

Q. By all means, sir.

A. Okay.

Q. The Judge would probably like it.

A. In January 11th of 1994, at that time I wasn't aware of the information as far as you could draw minority districts. And what I was saying, and what I have always said, that I wanted to see both, since both bodies have twelve members representing the same people, that we have the same district lines.

And that is what I was saying in that meeting. At the time—at that time I hadn't seen where you could do minority districts. So what I was saying is the fact that you could—that I supported what we had in place because of the fact that I was concerned about what it would do as far as jeopardizing that one seat that we did have.

Q. And you didn't know in January of 1994 that the NAACP plan had been drawn to provide two minority—protected minority districts? You didn't know about any such plan?

[47]

A. I didn't keep up with it, sir.

Q. All right, sir. Now, you have contended that blacks are discriminated against in the school system in your narrative statement?

A. Yes, sir.

Q. That is a pretty broad statement, sir. Do you have any instances or any names to supply the court?

A. I have several instances if you would like me to share some of them.

Q. Well, if the court wants it in a moment. Let me ask you this. Did you report those to the school system?

A. Yes. Not to the administration. Usually it was always directly to that school.

Q. All right. Whom did you report these to?

A. Most of the time it would be like the school principal.

* * * * *

[48]

* * * * *

Q. If I told you that any child, black, white, any child, that was accused of an infraction that might result in expulsion or suspension, that any such child had the right to a hearing in which he or she could bring anyone

they wanted there in his or her behalf? Do you know that to be true?

A. Yes, sir.

Q. All right. Do you know who generally presided over those hearings?

A. Who generally presided over those hearings?

Q. Um-hum?

A. Probably it would be the school attendance officer.

Q. Well, do you know a Mrs. Betty McCauley?

A. Yes.

Q. Did you know that she presided over those for some [49] years?

A. She hasn't always presided over them.

Q. No, she hasn't.

A. At the time that you asked me about the principal?

Q. Yes?

A. That was Mrs. Owens.

Q. Oh, okay.

A. And at the time it was Ms. McCauley, she was also the coordinator at the very school we are talking about.

Q. All right. Ms. McCauley is black, is she not?

A. She is.

Q. And at some point along the way a man named Joshua Bryant—

THE COURT: How do you spell that?

MR. THORNTON: B-r-y-a-n-t, J-o-s-h-u-a, I think.

THE COURT: All right.

BY MR. THORNTON:

Q. Mr. Bryant?

A. Yes, sir.

Q. And he presided over many of these hearings, did he not?

A. I couldn't answer that, Mr. Thornton, because I haven't gone to that degree. The degree that I have been involved with has been strictly for me, as a Police Jury [*sic*], to represent parents in my district. It wasn't to that level. It was always directly with the school.

[50]

Q. Did you know Mr. Bryant?

A. Yes, I do.

Q. What race is he?

A. He is black.

Q. All right. Now then if I told you that neither Ms. McCauley nor Mr. Bryant, in looking over these—in presiding over these hearings, could expel or suspend, that only the superintendent could, did you know that to be true?

A. No, sir, I didn't.

Q. And as the superintendent has testified in his narrative statement, when he makes a decision to accept or reject the recommendation for expulsion or suspension, that he doesn't even know the race of the student, are you prepared to deny that?

A. No, sir. If you tell me that that is true, I will accept that, sir.

Q. All right. Now, having learned all of this, can you think, or would you like to tell the court or us, for that matter, how you believe that we could make the suspension or the discipline system any fairer? What should we do that we are not doing?

A. What should you do that you are not doing?

Q. Yes, sir?

A. One of the things, I think is the fact that even though you have those people in place, they haven't always been in [51] place. Ms. McCauley was one time the principal of a school. When I have gone for parents it has always been to resolve it before it did get to that, and so the level that I have always dealt with principals on was the level of the kids having problems in the classroom, as well as whether the teacher didn't quite understand what was going on with that child. It has always been on that level. It has never been to the level that you have described at this moment.

Q. Okay. Would you fault our hearing system as being unfair?

A. Being unfair?

Q. Yes? Would you say that it is unfair?

A. Just because you have two black people that are involved?

Q. No, sir. Just because we have full and open hearings, and just because we don't make race an issue?

A. Yes, sir.

Q. Is that fair enough?

A. I guess it is.

Q. Then can you think of any reason why more—proportionately more black children are disciplined than white?

A. Can I think of any reason?

Q. Yes? If the hearing system is fair, what would be the reason?

[52]

A. Well, there are so many other variables that you have to take into consideration. Each case is different. There is information that sometimes might not always get—they might not get all of the information correctly.

A lot of things goes on that—before it even get to that. So before I make a statement like that, I would have to be able to look at all of the facts, and look at how it takes place, and all of the proper information to get to that hearing.

* * * * *

Q. Now, you state that you have tried to forget about race and politics, and that you concentrate on issues?

A. Yes, sir.

Q. You even state that you consider yourself to represent all of the constituents of your district, regardless of race, correct?

A. Yes, sir.

Q. And you have made that a theme in your campaigns, have you not?

A. Yes, sir.

Q. Do you think that that is proper to put race behind and talk about issues and represent the entirety of a [53] constituency?

A. Do I feel that that is proper?

Q. Yes?

A. Yes, sir.

Q. Could it be, sir, in your opinion that that may be the reason why you got so many white votes which enabled you to win in that district?

A. To win in my district?

Q. Exactly? Could that be the reason, because you didn't make race an issue?

A. Well, for me as a black person, race has always been an issue, all thirty-seven of my years, regardless. I don't make the issue, but it is an issue, something that I live with.

Q. But you got a lot of white votes, didn't you?

A. Well, when I go back and look at the statistics, it was based on that black base, which is the black community is the one that really helped me to be successful. I did get some white votes, but I wouldn't say a lot of white votes.

Q. Well, Mr. Gipson ran. Didn't he get some black votes?

A. He sure did.

Q. Okay. But in the overall, in the end, you got a lot of white votes which took you over fifty percent, didn't you?

A. Yes, sir.

Q. And you won?

[54]

A. Yes, sir.

Q. And you didn't make race an issue, did you?

A. No, sir.

Q. And I am asking you now sir, maybe when you didn't make race an issue, maybe that is the reason that you got some of those white votes, hum?

A. Yes, sir, but I have never made it an issue.

Q. All right, sir. And I congratulate you.

THE COURT: How many African Americans, sir, reside and are eligible to vote in your district?

THE WITNESS: At the time in 1983, it was about 500.

THE COURT: Wait a minute? 19?

THE WITNESS: 83.

THE COURT: 83?

THE WITNESS: Yes, sir.

THE COURT: Out of 500 voters?

THE WITNESS: Registered black voters.

THE COURT: And how many white?

THE WITNESS: I can't say, Judge, but it was more than 500. It has been a pretty good while, but it was a large number.

THE COURT: When was the last time that you were elected?

THE WITNESS: In 1987. Well, the last time I was [55] elected, 1990 [*sic*].

THE COURT: And what was the percentage of blacks and whites at that time, registered voters?

THE WITNESS: At that time I believe it was twenty-six percent.

THE COURT: That doesn't answer my question. How many black voters were there then, 1990, how many white voters, sir?

THE WITNESS: I don't recall. I can't tell you.

THE COURT: Well, which was the majority?

THE WITNESS: White was.

THE COURT: How much of a majority?

THE WITNESS: About sixty percent.

THE COURT: Sixty/forty?

THE WITNESS: Yes, sir.

THE COURT: And what was your margin of victory?

THE WITNESS: For my last election?

THE COURT: In 1991?

THE WITNESS: Well, that was the election that I was unopposed, so I didn't have anyone running.

THE COURT: What was your margin of victory , even though you were unopposed?

THE WITNESS: A hundred percent, I guess.

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Testimony of United States Government's witness Jerome Darby—Redirect Examination by the Appellants

[56]

* * * * *

BY MR. MULROY:

Q. Mr. Darby, there is a military base in your district, is that correct?

A. Yes, sir.

Q. Does that have any effect on your ability to be elected in a white majority district?

A. Yes, sir. In fact it has a big difference. That is what makes, I think, my election a lot more different than the whole area as far as Bossier Parish, because we do have a large military area in the Barksdale Air Force Base which they count that in my district, which makes it look like I have a large number.

But mostly military voters, they don't vote, because they live not necessarily—they are not registered to vote there, and they live up—not live other place, but basically as far as where they are registered it is not there. I have received some military votes as well.

Q. Well, of those military voters in your district who do vote in the local election, is there any reason to think that they might be more or less likely to support you as a black candidate?

[57]

A. One of the things from my own experience is that they are more open minded than most people that do live in Bossier. I think that a lot of it has to do with the exposure and being more open minded.

Q. When you refer to exposure, do you mean the environment in which military people live in, on base or in off base housing, as opposed to the rest of the parish?

A. Well, that and also coming from different backgrounds of the country where people are a lot more open minded.

Q. So most of this military population is not from Bossier Parish.

A. No.

Q. They would not be from Bossier Parish?

A. No. Basically, they are from all over the whole country.

Q. In terms of whether or not they live in an integrated environment compared to the other white residents of Bossier Parish, do you have any knowledge about that?

A. Yes. In fact basically they work real closely with different people from different ethnic backgrounds. Also you have a lot of blended families in military, so it is something that is not real unusual for them.

Q. And when you say blended families, what do you mean by that?

A. Meaning families that are not necessarily both white and [58] white or black and black.

Q. Do you think that you could—based on your experience in Bossier Parish politics, do you think that you could get elected in a white majority district against a white opponent in some other part of Bossier Parish where there wasn't military population?

A. No, by no means. And that holds true because of the fact that even when I have gone and campaigned

for other people, usually people in that parish vote along racial lines, meaning that blacks vote for blacks, and whites vote for whites.

Q. Let me turn to another topic. Mr. Joiner showed you —

THE COURT: Where was Congressman—former Congressman Espe [*sic*] from? Bossier Parish?

THE WITNESS: Espe, from Mississippi.

THE COURT: Oh, that is right, another state. Mr. Thornton condemn me for confusing Louisiana with Mississippi.

THE WITNESS: Yes, sir.

BY MR. MULROY:

Q. Let me move to another topic. Mr. Thornton showed you some minutes of a January 11th, 1994 meeting. Let me ask you a question or two about that. At the time of that meeting, did you understand that there was an NAACP plan which—consistent with the one person one vote requirements and contiguity requirements created two black majority [59] districts? Did you understand that at the time of the January 11th, 1994 meeting?

A. No, sir.

Q. There is also a statement in those minutes that Mr. Thornton asked you about that said that you favored having the Police Jury plan and the School Board plan be the same to avoid voter confusion. The Police Jury plan and the School Board plan for the 1980s were different, correct?

A. Yes, sir.

Q. So for the past ten years or more they have been different, correct?

A. Correct.

Q. In fact, since the proposed plan has [*sic*] not yet been implemented because it is the subject to this preclearance suit, the current plan to this day still has different plans for the School Board and the Police Jury, is that correct?

A. Yes.

Q. If you had to choose, Mr. Darby, between having a situation where the Police Jury plan and the School Board plan were the same, and there were no black districts whatsoever, or another situation where you had a Police Jury plan and a School Board plan be different, but at least the School Board plan would give you two black districts, if you had to choose between those two, which one would you choose, Mr. Darby?

[60]

A. The School Board plan that would give you black districts.

Q. Mr. Thornton—

THE COURT: In order to arrive at that answer, Mr. Darby—

THE WITNESS: Sir?

THE COURT: Excuse me, I apologize to you. In order to give that answer or arrive at that answer, how would you square that with the alleged impediment of Louisiana state law? Do you know what I mean by that?

THE WITNESS: No, sir, if you could explain.

THE COURT: Well, counsel have informed me that in any redistricting plan Louisiana law does not permit changing precinct lines. Have you heard that?

THE WITNESS: I have heard them talk about that throughout this trial. Basically, when we was redoing our—when we was doing our reapportionment, that wasn't a factor. Basically what we basically concentrated on was just the districts, drawing the district lines.

THE COURT: And that cut across precinct lines?

THE WITNESS: District lines?

THE COURT: The new district lines that you were drawing cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: And they have argued here that [61] Louisiana state law prohibits that.

THE WITNESS: Yes, sir.

THE COURT: Okay. All right.

MR. MULROY: Thank you, Judge. One final point.

BY MR. MULROY:

Q. Mr. Thornton was asking you some questions about discipline in the schools in Bossier Parish and whether there was any racial discrimination in meting out discipline to students. Your experience you testified on cross examination with the discipline of students was at the lower level, believe [*sic*] you got to the formal hearing process, is that correct?

A. Yes, sir.

Q. And it is possible for discipline to occur at that level, correct?

A. It definitely is.

Q. And in your experience that discipline at that lower level which you know about occurred disproportionately to black students?

A. Yes, it did.

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Testimony of United States Government's witness Jerome Darby—Recross Examination by Appellee

[62]

* * * * *

BY MR. THORNTON:

* * * * *

Q. So it wasn't a question of cutting and splitting precincts, it was creating new precinct lines in order to reflect the shift of population from the 1980s to the 1990s?

MR. MULROY: Your Honor, I would like to object to the way that counsel is characterizing that statement, as though there was necessarily some difference between creating a precinct and cutting and splitting precincts.

THE COURT: I think that the court has got enough intelligence to understand that. Overruled.

MR. MULROY: Thank you, Judge.

BY MR. THORNTON:

Q. You created new precincts under the one man one vote [63] rule didn't you?

A. Yes, sir.

Q. And that is your obligation as a Police Jury, is it not?

A. Yes, sir.

Q. Because you are the governing body of the parish?

A. Yes, sir, that is correct.

Q. So you create new precinct lines to reflect the shift in population, and then from that you drew your district lines, twelve of them, is that correct?

A. Yes, sir.

Q. All right. Mr. Darby, do you have any reason to believe, or do you have any statistics, or is there any data available to indicate to you that the white votes that you got in your district were Barksdale people—

THE COURT: Were what?

BY MR. THORNTON:

Q. Were Barksdale Air Force people any more than they were just any other white citizens in that district?

A. Do I have any data?

Q. Yes?

A. Well, if you look at the two precincts that are in my district, basically one of the precincts is predominantly black. It has some white voters there as well. The other precinct is predominantly white. Of course, that means that when military people vote, they vote at that predominantly [64] white precinct. So based on what you just said, no.

Q. So you don't have any data on that?

A. No.

Q. Actually, Barksdale Air Force Base has been there in Bossier Parish for seventy, eighty, or ninety years, has it not?

A. Yes, sir.

Q. It is an old Air Force Base?

A. Yes, sir.

Q. And Bossier Parish is pretty well populated by people from the military who retired at Barksdale Air Force Base and simply stayed in the Bossier community, isn't that correct?

A. Yes, sir, that is correct.

Q. So Barksdale people, whites and blacks, are scattered throughout the parish, are they not?

A. Yes, sir, that is correct.

* * * * *

Testimony of United States Government's witness Jerome Darby—Further Redirect Examination by the Appellants

[64]

* * * * *

BY MR. MULROY:

Q. Mr. Thornton just asked you whether the Barksdale [65] population might be scattered throughout the parish. Based on your experience as a native of Bossier Parish, and your experience in Bossier Parish politics, would you say that there is a higher concentration of what Mr. Thornton called, Barksdale people, in your district as opposed to the rest of the parish?

A. Yes. Because it is closer to the military base, and usually for the area, as far as the community, Government Park and the area along there, that is where most military people, if they are not living on base, they move in those areas.

* * * * *

Testimony of Appellant-Intervenors' witness Jerry Hawkins—Cross Examination by Appellee

[67]

* * * * *

BY MR. THORNTON:

* * * * *

Q. Mr. Hawkins, how many seats do you believe on the School Board African Americans ought to have?

A. At least two, sir.

Q. Why? Why two?

A. Because of the districts.

THE COURT: Because of what?

THE WITNESS: Because of the number of districts that we have.

BY MR. THORNTON:

Q. Do you think that you ought to have two members because that is your proportion to the population?

A. Yes.

Q. All right. Do you believe that that is what the Voting Rights Act stands for?

A. Yes

Q. Has anyone ever told you any differently?

A. No.

* * * * *

[68]

* * * * *

Q. You made the statements that blacks are treated unequally in the school system. Do you believe that?

A. Yes.

[69]

Q All right. Are you familiar that—with the law suit entitled *Lemon versus Bossier Parish*?

A. Yes, partially.

Q. Do you understand it to be the litigation vehicle that presides over the Bossier Parish school system with regard to integration?

A. Yes.

Q. All right, sir. If you believe that blacks are treated unequally in the school system, have you ever filed, or seen filed, or caused to be filed any documents in the *Lemon* case in say the last fifteen years that would assert that?

A. No, sir. But in 1988, I believe it was 1988, the Concerned Citizens raising money for that, and we hired an attorney out of Monroe to go against that litigation, I believe.

And the lawyer did not file the suit. And we was out of money, so we couldn't file another suit, so we went another different direction by contacting J. Bennett Johnson. Sent him a letter, and also sent a letter to Congressman Buddy Roemer at that time. We done everything we could to try to stop this litigation.

Q. I see. But you did not file—nothing was filed in *Lemon*?

A. No, no, sir.

Q. That would have been the place to file it, wouldn't it?

[70]

A. I suppose.

* * * * *

Testimony of Appellant-Intervenors' witness George Price—Cross Examination by Appellee

[77]

* * * * *

BY MR. THORNTON:

Q. Tell me, sir, how many seats on the School Board should black citizens hold?

[78]

A. I believe that the population of Bossier Parish is such that it is sufficient enough to elect at least two blacks to the Bossier Parish School Board.

Q. Do you believe that this is true because of the proportion of the black population to the entire population?

A. When we look at the number of the seats on the Bossier Parish School Board, taking into consideration the total population of the parish, I feel that to be the case.

Q. All right. Now, I want to show you something, Mr. Price, and ask you some questions about it. Do you have your narrative statement in front of you?

A. I do.

MR. THORNTON: I am not sure that I have his latest one right here. May I approach the witness and coordinate?

THE COURT: Of course.

THE WITNESS: What page was that?

MR. THORNTON: Well, let's see, it was on page twelve, and it appears to be twenty-three, paragraph twenty-three.

THE WITNESS: That is not it. Do you have a current—is that my testimony that you have?

MR. THORNTON: Yes.

THE WITNESS: It is April 7th. You need to get the updated copy.

MR. THORNTON: While he is trying to get that I [79] will go on and save some time.

BY MR. THORNTON:

Q. Mr. Price, when you asked to have some participation, or wanted some participation in drawing the redistricting or reapportionment plan for the School Board, you wrote some letters, did you not?

A. That is correct.

Q. And I think that those letters are exhibits here?

A. Right.

Q. All right, sir. And I think that you have a complaint that they were not answered, or that you were not allowed in on the reapportionment planning, is that correct.

A. No, sir. That is partially correct. Initially, I wrote a letter to the superintendent in March of 1992 requesting information concerning the upcoming reapportionment process, and that we would want to be made aware of the status of the reapportionment process.

As I communicated with the Bossier Parish School Board, I always did that in a written form, and I always asked that they would respond in a written form, because in the past I had been made aware of people not remembering communications by telephone or by hearsay. So I have always communicated in a written

form, and I have always asked them to respond in a written form. That was not done.

Q. What kind of participation did you have in mind?

[80]

A. I wanted to be involved to present what I considered the minority views on the current makeup of the School Board which consisted of twelve white members, and the fact that we felt as though we needed a voice on that particular School Board.

Q. All right. Did you want to have a vote in the reapportionment?

A. No, sir. As I indicated in my correspondence to the School Board, we always respected the authority of the School Board, and we always asked that we work through the School Board.

Q. Did you want to have a right to sit in the executive sessions with them when they talked about this problem?

A. No, sir. All of my communications was through School Board members. I never considered myself capable or able or authorized to sit in any kind of executive sessions with the Bossier Parish School Board.

Q. So the participation that you had in mind then was the participation or the right to tell the School Board the views that you had and wanted to see them adopt, is that right?

A. Again, partially correct. Counselor, I wanted to tell them the concerns and the desires that existed in the minority community. I wanted to tell them how the minority community felt about the issues of the Bossier Parish School Board.

[81]

Q. All right, sir. Now in any public School Board meeting, as I recall you can sign a book outside which indicates that you want to speak to the board, is that correct?

A. That is correct.

Q. Now, sir, during this period of time during this redistricting, did you ever appear before the School Board?

A. I appeared before the School Board on numerous occasions, and again, I want to emphasize that we initially requested this in March of 1992, and that the reason why we requested this was to have a written response from the School Board so that when these meetings were held our presence and our presentations would be a matter of record.

Q. Well, did you get to make those presentations?

A. We always had an opportunity to go before the School Board, and—

Q. Well—

A. I am sorry, go ahead.

Q. No, I interrupted you, Mr. Price, I am sorry.

A. Okay. Yes, we went before the School Board, and when we finished they would say, thank you, and they would go to the next agenda item.

Q. All right, sir. Did anybody ever deny you the right to address the School Board and present your concerns?

A. I have never been told that I couldn't speak.

Q. Let me ask you this. From time to time you have given [82] complaints about the school system to Superintendent Lewis, have you not?

A. Again, I have spoken with the superintendent on numerous occasions.

Q. And sometimes you gave him a written list of complaints, have you not?

A. Every presentation that I have made before the School Board, I provided the School Board with copies.

Q. I am asking you about Superintendent Lewis?

A. If I met with Superintendent Lewis, I gave him copies.

Q. One of your concerns has been that they didn't hire enough black teachers, isn't that correct?

A. That is correct.

Q. All right. Mr. Lewis tells me that he invited you to go along with them on one occasion when they were trying to recruit black teachers. Did you go?

A. When did he ask me?

Q. That is not true then?

A. I said, when did he actually—

Q. I am asking you. He told me that he had. I am asking you if that is not so?

A. Well, may I explain when he asked me?

Q. Oh, sure.

A. He asked me after several presentations before the School Board, several written pieces of communication before [83] the School Board, and he asked me to go with the School Board on a day in which—I am fully

employed, and I couldn't go. Yes, he asked me to go with them.

Q. All right. Now, is it true that you requested of Superintendent Lewis that more black teachers be assigned to predominantly black schools to provide role models for the young students?

A. If you will excuse me for a second. I am looking for exactly what I requested, because it was in writing. I requested that—in item D of a presentation that I made to the School Board, the development of a reassignment and a transfer program to insure parity or equalization of minority teachers at all schools. That is what I asked for.

Q. You didn't talk in terms of assigning black teachers to black schools as role models?

A. No, sir. I have always advocated black teachers to be in these places for children to communicate with and be there. I don't hold the perception that blacks are the only persons that should have role models. I believe that role models are important to all people.

Q. Thank you, Mr. Price, but really what I am asking is, did you in any way indicate to Superintendent Lewis that you would like to see more black teachers assigned to predominantly black schools as role models. That is all that I am asking you.

[84]

MR. BORKOWSKI: I would object that the question has been asked and answered.

THE COURT: Once more.

THE WITNESS: All right. What I Superintendent Lewis in a conversation that we had—we have several

schools in Bossier Parish with no black teachers. I asked that those teachers could be reassigned so we could at least have black teachers at every school. That is what I asked as eluded [*sic*] to in my statement here.

THE COURT: All right. Anything else?

MR. THORNTON: Yes, sir.

THE COURT: All right.

MR. THORNTON: Not on that though. I am finished with that line of questioning.

THE COURT: All right. What else do you want to know?

BY MR. THORNTON:

Q. Well, I want to direct you to your narrative statement on paragraphs twenty-five and twenty-six. Do you have it before you?

A. I sure do.

Q. All right. Let me read twenty-five, and you follow me and tell me if I read it incorrectly. Twenty-five: It is a widely held perception in the African American community of Bossier Parish that it is pointless for any African American [85] who will stand up for the interest of the black community to run for office.

MR. THORNTON: That is paragraph twenty-five Your Honor, I am sorry.

THE COURT: I have got it.

BY MR. THORNTON:

Q. The perception is based on the knowledge of the population breakdown of the election districts, all of which are majority white, and knowledge of the dynamics between blacks and whites in the parish, specifically

the wide-spread belief that most whites will not vote for a black candidate. In addition, there is a majority vote requirement in Louisiana elections.

Number twenty-six: Only three African Americans have been elected to significant political offices in Bossier Parish from majority white electoral districts. Johnny Gipson was elected to the Police Jury in 1975 [*sic*]. He had a reputation for speaking out about issues of concern to the African American community.

He served one term, being defeated in 1983 by Jerome Darby, another African American who has been reelected twice since 1983. In addition, Jeff Darby, his brother, was formerly a member of the City Council of Bossier City, but was defeated by a white candidate in the last election.

Neither of the Darby brothers is a member of the NAACP [86] or the Concerned Citizens Association, nor has either brother attended meetings or associated with either organization—with either organization in any way.

It is a widely held perception in the African American community of Bossier Parish that the only way that an African American can have a chance to get elected from a majority white district in the parish is by keeping a low profile with regard to racial issues, and not belonging to or being associated with organizations such as the NAACP or the Concerned Citizens.

Let me ask you some questions about those statements.

A. And I would like to just make the statement that I stand by every word of that.

Q. Good, good. Now, Mr. Price, do you think that race ought to be an issue in an election?

A. Sir, I don't think that race ought to be an issue, but you and I both know it is.

Q. You are speaking for the black community, Mr. Price. Please don't speak for me.

A. Well, I can only assume that you are aware of how things are in America.

Q. Mr. Price, is it your idea that a black who is elected to office ought to represent only the blacks in his constituency?

A. No, sir.

[87]

Q. Do you condemn the Darby brothers—

A. No, sir.

Q. —for not making race an issue?

A. No, sir.

Q. And yet I would treat your account of this as being very critical of them for not being—or standing up, as you put it, for black citizens?

A. I haven't seen any in my statement—

THE COURT: Objection sustained.

THE WITNESS: I haven't seen anything in my statement that mentions race.

THE COURT: He objected. I sustained the objection. He stood up and objected.

MR. THORNTON: I didn't hear anything.

BY MR. THORNTON:

Q. The only way that an African American can have any chance to get elected from a majority white district is by keeping a low profile with regard to racial issues. What did you mean by keeping a low profile, of not making race an issue?

A. I believe that it is identified in that statement as I said, by speaking out on racial issues, or being members of the organizations that are identified in the statement.

Q. Mr. Price, you stand by this statement you said, every word of it?

[88]

A. Yes, sir.

Q. All right, sir. Mr. Price, when you have made any sort of complaints about the school system, had Mr. Lewis always accepted what you gave him?

A. Mr. Lewis has always accepted what we gave him, but not yet responded to what we gave him.

Q. Well, did he explain to you the problem as he explained to the court of trying to hire more black teachers? Is that the first time that you ever heard his explanation?

A. No, sir, it is not. But we went before the School Board and presented a list of concerns from the black community. We asked that they respond to those concerns. After several weeks of no response, we went back again and asked what happened to those concerns?

They asked us to provide a list of solutions to our own concerns, or to give them some ideas of how these things could be done. We did that after much research. We did that. We submitted what we considered partial solutions to our concerns, and that did include a recommendation on how to recruit more black teachers. Yes, sir, we did that.

Q. All right, sir. Let me ask you what was your solution? You have Superintendent Lewis in the back, and I know that he is retiring, but tell him, tell the court what you want him to do that he hasn't done?

A. Again , counsel, I want to make clear of what I am [89] saying. I am saying that as we went before Bossier Parish School Board, we always submitted suggestions and concerns. We never submitted goals. In my statement we identify what could be done—what, in our opinion, could be done to recruit more black teachers. Let me see if I can find it quickly.

On page eleven of my testimony. The main areas of concern about school operations are as follows. Develop an early recruitment for black teachers, diligence in recruiting, hiring, retaining, and promoting African American teachers.

Those were our concerns. Let me see if I can find our solutions—our recommendations rather. I am not able to find it, but I believe that it is a matter or record. If I could have—

Q. Let me just ask you this—

A. Just a minute. I have them here. I have them here.

THE COURT: What page?

WITNESS: Suggested solutions in my testimony, sir.

THE COURT: Page and paragraph what?

THE WITNESS: I don't see a number on there.

MR. BORKOWSKI: Your Honor, that is at twelve A.

THE COURT: Thank you.

THE WITNESS: I said the Coalition of Bossier [90] Parish, Concerned Citizens of Bossier Parish, Men's Club, Concerned Citizens of Plain Dealing and Bossier Parish Branch and NAACP suggested solution to our concerns to Mr.—

MR. THORNTON: Wait a minute. I am still looking for that. That is exhibit what?

THE COURT: They are not labeled as exhibits in the attachments to the statements furnished the court.

MR. THORNTON: Can you show it to me?

MR. BORKOWSKI: Yes, sir, absolutely.

THE WITNESS: Counselor, this suggested solutions to our concerns was addressed to then President Barry Musgrove, and this information or response is provided to you as a follow up to our presentation on July the 15th.

The Executive Committee of Bossier Parish Branch of the NAACP, and other organizational leaders, met on July the 20th, 1993, to discuss the best method of previous recommendations to you that we feel will improve certain areas of our school system.

We hope that the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns. And then we went on to name our recommended solutions.

And in item two the issue of teacher recruitment concerns us greatly. We feel strongly that additional ef-

forts can result in the placement of additional minority [91] teachers into the Bossier Parish school system. The following steps may help. Expand the area of recruitment to include—

BY MR. THORNTON:

Q. Mr. Price, let me interrupt you. We have it—the court and I have it before us.

A. Well, I wanted to make sure that you understood it.

Q. I think that the court has, too. Let me ask you some questions about them, unless the court wants you to read them all into the record.

THE COURT: No. They are already in the record as a part of his testimony—direct testimony. Sir, you don't have to read them again, because the court has them before it, unless you want to read it.

THE WITNESS: Well, sir, I wanted to point out a couple of things.

THE COURT: All right. Why don't you do that, because this is an important matter for you and for all of us.

THE WITNESS: Yes, sir. And item G of this—on these recommendations, we ask the insurance that the School Board show compliance with the 1970 consent decree which requires a seventy-five/twenty-five high end ratio until requirements are met.

Currently, we are not in compliance with that [92] requirement by the courts, and that simply meant that for every hundred teachers hired for Bossier Parish, twenty-five should be black, and seventy-five should be white, until the School Board was in compliance with

the consent decree, and that is why we were very concerned about that issue as we present it in this particular document.

BY MR. THORNTON:

Q. Now, Mr. Price, let me ask you about this. You heard Mr. Lewis this morning, did you not, answer the court's questions about how he goes about trying to recruit black teachers?

A. Yes, sir. He said that he goes to Grambling and Louisiana Tech.

Q. Well, I think that he talked about LSU as well, did he not?

A. But as you notice in our recommendations, we included some of the southern black—predominantly black colleges in the State of Louisiana such as Southern in Baton Rouge, Xavier, and Dillard in New Orleans, and we expound on that, and we made some recommendations on how that could be done.

Q. You think that he is not going to enough schools, is that it?

A. Yes, sir. This document, I think, speaks for itself.

Q. He also talked about the difficulty of hiring because of salary gaps with neighboring parishes. Do you think that [93] that is a concern?

A. Well, we have talked about that even before the School Board. Now, my concern is the dilemma there. If whites have—

THE COURT: Wait a minute, your concern is what, sir?

THE WITNESS: I have a dilemma with his explanation of why he can't hire blacks. Your Honor, there is

no problem to hire white teachers in Bossier Parish, and I asked the question at the School Board meeting, are you all paying them different? Do white teachers make more than blacks? He said no.

I said, well, why don't you have a problem if salary is a problem hiring black—I mean white teachers. You always have white teachers. He said, well, I don't know. But the question still remains, if the salary in Bossier Parish is low, why is there no problem recruiting white teachers, only black teachers?

And what I have been told by black teachers is that the reason why they don't come to Bossier Parish, they cannot get promoted. They are not treated fairly in the system, and they have to leave, because they come in and see white teachers come in that they know received certification after them, and they rise to higher positions in the system, and the blacks that have been there do not get those [94] opportunities, and they seek them elsewhere. That is one of the things that we have expressed as a concern.

BY MR. THORNTON:

Q. Well, Mr. Price, if that is true, then shouldn't motions and petitions have been filed in the *Lemon* case to protest that?

THE COURT: Mr. Thornton, how can—this is a lay person. He may be a leader in the community, and nobody doubts that—and nobody doubts that, I don't think. At least the court doesn't doubt it.

THE WITNESS: Thank you, Your Honor.

THE COURT: But he is not supposed to pursue everything in the world through the courts or whatever, is he?

MR. THORNTON: I think he is.

THE COURT: Well, maybe you do.

MR. THORNTON: They certainly have attorneys to do that.

THE COURT: I don't know whether they do or whether they don't. The issue in this case is whether the Attorney General of the United States properly denied preclearance of the districting plan for the election of School Board in 1993 for the Bossier Parish.

That is the issue. It doesn't have anything to do with whether he has filed a motion to supplement the record, [95] or to intervene, or to get some further relief in a school desegregation case. That doesn't have anything to do with that, does it?

MR. THORNTON: Your Honor—

THE COURT: Does it? Does it?

MR. THORNTON: Well, with all due respect to the court, yes, it does.

THE COURT: All right. Thank you very much. If it does, I will take your word. You can say that it does, and you can give me a memorandum showing my why. All right, next question.

MR. THORNTON: All right, sir.

BY MR. THORNTON:

Q. Do you think, Mr. Price, that the disciplinary system falls more heavily on black students than on white students in Bossier Parish?

A. Without question it does.

Q. Have you ever attended one of those hearings?

A. I have had numerous members of the NAACP request that I go, and I have been asked not to come on some occasions by some of the School Board people, that they could handle and resolve that issue. I have not attended a School Board hearing with any parent.

Q. Is it your testimony that you have been told that you have been discouraged from attending any of those hearings, [96] and if so, by whom?

A. By School Board officials.

Q. By whom?

A. By Joshua Bryant. By the personnel man in Bossier Parish, oh, what is his name?

Q. What reasons did they give you?

THE COURT: Well wait a minute. Let him think. Don't jump on him.

THE WITNESS: That they would resolve the issue. That they would resolve the issue. And might I say in my opinion, and I am speaking from my opinion now, that these issues are things that they would rather not have public concerning the treatment of the students in the system, so they would refrain from any opportunity of making allegations of mistreatment of students, especially black students, a public issue. And they will tend to resolve that.

BY MR. THORNTON:

Q. And the people who told you this, were they black or white?

A. They are black.

Q. All right. You heard Mr. Lewis outline the procedure for disciplinary action in the Bossier Parish School Board. Do you think that that is a fair system?

A. It may have the mechanisms in place to be a fair system, but again, my opinion is that it is not a fair system.

[97]

Q. How would you make it more fair?

A. Well, I would certainly have people that have legitimate concerns and complaints heard, and I would certainly look into—and let me just emphasize on what I am talking about here, too.

We went before the School Board and asked for statistics on expulsions, on disciplinary actions, on kids being put in the GASP program, on the low scores of black students, and they have told us that they don't keep those statistics according to race.

But yet we know that there is some differences between the number of black expulsions and retentions that they have in the system than there are as they apply to the white students. They told us that they do not keep those according to race.

Q. You are telling this court and me, under oath, that there are different standards for disciplining white from blacks in the Bossier Parish school district, is that what you are saying?

A. I am telling you my opinion, and my opinion is, yes, it is.

THE COURT: And that African American people, or students rather, excuse me, are treated more severely?

THE WITNESS: Yes, sir.

THE COURT: Than white people?

[98]

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: For the same offenses.

THE COURT: Correct. I understand your position and testimony.

MR. THORNTON: I have just a question or two, Your Honor.

BY MR. THORNTON:

Q. During the redistricting process, Mr. Price, do you know of any group representing any—or claiming to represent any group of people, black, or white, or so forth, who had any more participation in the plan and the reapportionment process than the Concerned Citizens or the NAACP?

A. Counselor, when you say participation, let me tell you what my definition of participation is. Participation to me is not coming to the board and presenting an optional plan and leaving. Participation is trying to find out what they can do as board members that were duly elected to represent us to address these concerns.

Nobody never came to us and sat down with us and said, what can we do as your elected board members to do something about your concerns? They let us make presentations, and as I said a few moments ago, after we made the presentation they said, thank you, and they went on to the next agenda item. Now, I don't know what you mean by participation. I don't [99] consider that participation. I consider that coming and making a presentation.

Q. All right. Now, do you know of any other groups, any groups whatsoever, in which any School Board member went to see and asked about the redistricting plan?

A. I know that there was some people there from the Concerned Parents of Plain Dealing. I know that there was some people there from the Tenant Coalition, and I know that there was some people there from the Bossier Parish Voter League, all of whom the presidents of those particular bodies elected me as their spokesperson, and was in agreement with the letters and the documents that I presented. I don't know what else—how else I can answer you on that.

Q. Well, I guess the only question, Mr. Price, was in the participation. Do you know of any group that participated any more actively than your presentation, or who sat in on the meetings that adopted the reapportionment plans? If you do, tell us who they are?

THE COURT: What year are you talking about? 1991?

MR. THORNTON: 1992, 1993, and even into 1994.

THE COURT: Wait a minute. I am the Judge here. I have got to decide this case. Now, you are talking about a 1991 plan, or was there one in 1992, or just action on a 1991 plan in 1993? Now what are you talking about?

MR. THORNTON: I am talking about the deliberations [100] of the School Board in 1992.

THE COURT: All right. That is different than 1991 and 1993. What did they do in 1992?

MR. THORNTON: And on into 1993.

THE COURT: What did they do? Did they adopt a plan during that period?

MR. THORNTON: They adopted a plan during that period.

THE COURT: The School Board?

MR. THORNTON: The School Board.

THE COURT: For election of its members?

MR. THORNTON: On the time schedule—I think it was in September of 1992.

THE COURT: All right.

THE WITNESS: October, October.

MR. THORNTON: October of 1992.

THE COURT: Thank you, sir. You are helpful.

THE WITNESS: Thank you.

MR. THORNTON: Do you want me to restate my question now?

THE WITNESS: Yes.

THE COURT: Well, we have got to keep it in focus, Mr. Thornton:

THE WITNESS: Yes.

BY MR. THORNTON:

[101]

Q. Do you know of any group, any group of citizens, any private group, not the School Board members but any private group who sat in on the deliberations with the School Board when it was discussing the adoption of a reapportionment plan?

A. Let me reemphasize to you what happened. Again, the major black organizations in Bossier Parish elected me as their spokesperson.

THE COURT: You have said that.

THE WITNESS: All right. We came to these meetings and made presentations. We did not sit in on deliberations or decision making as the plan was adopted. We made presentations.

When the plan was voted on, the night that the plan was voted on, we had a map on display, as well as the Bossier Parish School Board had a map on display. After our presentation at the public hearing, they moved on to adopt their plan.

Now, I don't know what you mean by participation. You keep using that word, but I have a difference—a different idea of what participation is and what presentations are.

MR. THORNTON: May it please the court, I know that I am taxing the patience and time of the court, but I am not getting answers to my questions.

[102]

THE COURT: Overruled. You may not be getting the answers that you want, but you are getting answers. So that is it.

MR. THORNTON: Well, in that case, Your Honor—

THE COURT: What else can you do about it? Nothing.

MR. THORNTON: I can give up I guess on this witness.

THE COURT: I believe that you could. It is your option.

* * * * *

Testimony of Appellant-Intervenors' witness George Price—Redirect Examination by Appellants

[102]

* * * * *

BY MR. BORKOWSKI:

Q. Mr. Price, after you sent this letter to the School Board asking to participate in the redistricting process, you weren't given any information, were you, about any work session that the School Board had with Mr. Joiner to look at options or work on a plan, were you?

A. No, sir. No response at all.

* * * * *

Testimony of United States Government's witness Jerome Blunt—Cross Examination by Appellee

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[106]

* * * * *

BY MR. THORNTON:

Q. When you were on the School Board, Mr. Blunt, did you have much contact with Mr. Price or any of the other leaders of the black community?

A. I don't quite understand your question. When you say contact, do you mean at regular board meetings?

Q. No, sir. I mean outside of board meetings. Were you close to those groups?

A. No. I would say no, I wasn't close.

Q. Did they ever talk to you at all about their concerns in the school system?

A. At the board meetings, yes.

Q. How about outside of the board meetings?

A. No, they didn't.

Q. They didn't ask you, for example, to go to the superintendent and talk about hiring black teachers?

A. No.

Q. They didn't come to you as a black School Board member and ask you to look into the disciplinary mechanism in the school system?

A. No.

Q. They didn't come to you and ask you about assigning black teachers to black schools as role models?

A. No.

[107]

Q. Why do you think that they didn't do that, Mr. Blunt?

A. My personal opinion on that, Mr. Thornton, is that Mr. Price and the coalition have been fighting this fight for a long time. They had information that—they are long-time Bossier residents, so they knew the ins and outs of the school system, and they knew, in fact, what the minority community wanted and needed.

Q. But you were sort of an insider at that point, sort of on the School Board?

A. That is right.

Q. I would have thought that they might want you to lead or to pinpoint their concerns within the school administration. They didn't ask you to do that?

A. No. I would like to explain that answer. The African community in Bossier Parish is concerned about various things in the school system, but also we have our own things that we are concerned about now.

My role as a School Board member was to represent District K, the district that I was concerned [*sic*]. Now, I was also concerned about all of the members of the parish also, too. As a School Board member then, my concern is the entire parish and my district.

Q. Did you consider, then, that you really represented the whole constituency, and you were interested in the betterment of that district and the School Board system, is that [108] correct?

A. Absolutely.

Q. You didn't think that you just represented blacks, you thought that you represented everybody, is that correct?

A. That is correct, but I would like to expand on that answer.

Q. All right, sir, by all means?

A. Okay, I represented the whole school system. I think that that is foremost. But when there is a population that seems excluded, that does not seem that they are a part of the system, then my role also as a board member is to look into those concerns and to talk with those people about those things.

Q. And did you?

A. I was aware of those things at the board meeting. When I was on the board, a lot of those things were already in place. As Mr. Price had talked to earlier, he had asked to be on the process early in 1992. My appointment started in September 1992.

* * * * *

[109]

* * * * *

Q. When you ran for reelection, did Mr. Barry Musgrove give you any assistance in running?

A. I asked Barry Musgrove, and he gave me some information, but when I asked for support from my fellow colleagues as an incumbent, all of them were basically afraid to come out and say that I am supporting Jerome Blunt, because they were worried about the persecution if they—of their constituents maybe, and the persecution of the person who maybe would replace me.

Q. In other words, they didn't take a real active part, but they did—Mr. Musgrove gave you some advice, did he not? I mean—

A. Yes.

[110]

Q. I mean seemed friendly to your campaign?

A. Yes.

* * * * *

Testimony of Appellant-Intervenors' witness David Creed—Cross Examination by Appellee

[115]

* * * * *

BY MR. THORNTON:

* * * * *

Q. You say that it has been a common practice in Louisiana to cut and split precincts?

A. Yes, sir. To my knowledge, and I am confident that that is true.

Q. Oh, I think it is. And there is a state law that you are aware of, are you not —

A. Yes, sir.

Q. — that prevents that?

[116]

A. Act 925, that is right.

Q. But the Police Jury sometimes accommodate other subdivisions by splitting precincts?

A. Yes, sir. And all of the cases that I know about they have accommodated.

Q. Do you know of any law, or have you been told of any court decision or any law that says that a Police Jury can violate or set aside the state law for these purposes?

A. Well, I —

MR. BORKOWSKI: He is assuming facts that are not in evidence.

THE COURT: Overruled. I will let him answer.

THE WITNESS: Am I aware of any laws at all?

MR. THORNTON: Yes.

THE WITNESS: That would allow —

BY MR. THORNTON:

Q. My question, Mr. Creed, is when you are doing these, you don't know—or do you basically know whether what you are doing is legal in Louisiana or not?

A. I believe that it is legal, yes, sir.

Q. All right, On what basis do you believe it?

A. Because I have found nothing in the law that it violates any laws anywhere, and because I have done—counting the one that I am working on now, I have done —that makes fifteen, and they have all been precleared, and accepted, and [117] elections have been held, and people now hold their positions, and I guess that I am assuming that it is legal.

Q. You are assume [*sic*] that it is legal?

A. Yes, sir.

Q. All right. Now then, you state some opinions about gerrymandering?

A. Yes, sir.

Q. And your opinion is that this—well, not this plan, but the plan that was—the plan that the Bossier Parish School Board presented and is before this court, you are saying that that is a gerrymandered plan?

A. No, sir.

Q. Well, are you saying that Mr. Cooper's plan is gerrymandered?

A. No, sir.

Q. So you see no gerrymandering at all?

A. Everyone seems to have a different definition of gerrymandering here.

Q. What is yours?

A. My definition—it is in my written testimony, but generally that you would take a geographical area and draw an area in order to create a district for an elected body that would take all kinds of twists and turns and be what I said was tortuous and convoluted in order to arrive at whatever goal it might be that you are trying to arrive at in drawing [118] the districts. That is gerrymandering to me.

Q. Would gerrymandering be the opposite of sound demographic principles?

A. It would not be consistent with sound demographic principles.

Q. All right. If you have sound demographic principles and use them, you would not have a gerrymandered district, would you, is that fair enough?

A. That is fair.

Q. And you don't find that there is gerrymandering in any of these plans?

THE COURT: Which plans? Any of—there are so many that we are talking about here, I want to know which ones you are asking about?

BY MR. THORNTON:

Q. The School Board, and have you seen the Cooper two plan?

A. I understand that there is a NAACP plan. I have not seen that plan.

Q. All right. You have seen the Cooper plan?

A. I have seen one called the Cooper plan.

Q. And you have seen the one that we call the Police Jury plan that is before this court?

A. Yes, sir.

Q. And you find no gerrymandering in either of those?

A. I find it to be about the same as most of the plans that [119] I have seen developed and approved.

Q. All right, sir. I had one other question and it slipped my mind. Just a moment. Oh, the question was, sir, in all of the precinct splitting of plans that you helped to get to preclearance, what is the largest number of precincts that you have ever split?

A. Eight.

Q. No more than eight?

A. No, sir.

MR. THORNTON: No further questions, Your Honor.

THE COURT: When did you draw—no further questions.

MR. THORNTON: From me.

THE COURT: Do you have any?

MR. BORKOWSKI: No, Your Honor.

THE COURT: Are you finished?

MS. HUME: Yes, Your Honor.

THE COURT: All right, Mr. Creed, let me ask you a question.

THE WITNESS: Yes, sir.

THE COURT: You say that you have in the course of your work over the last fifteen years I gather —

THE WITNESS: Yes, sir.

THE COURT: —have drawn a large number or a substantial number of boundaries, geographical boundaries for [120] the election of various entities or political –

THE WITNESS: Yes, sir.

THE COURT: — groups?

THE WITNESS: Right.

THE COURT: Throughout the State of Louisiana?

THE WITNESS: Throughout northeast Louisiana is where—I am located in Monroe Louisiana, and Louisiana has eight planning and development districts which cover the state, and the one that I am the director of covers the northeastern part of the state. And like I said, I am in Monroe. The ones that I have done have been in that part of the state.

THE COURT: Is that the same part that we are talking about here?

THE WITNESS: No. sir. That is the northwestern part.

THE COURT: All right. Mr. Thornton told me that yesterday. Were you here yesterday?

THE WITNESS: Yes, sir.

THE COURT: Did you hear the testimony that there is a Louisiana state law that says that you can't modify or cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: Under Louisiana state law in order to accomplish and establish a redistricting plan?

[121]

THE WITNESS: Yes sir. I have a copy of the law.

THE COURT: How many times have you had to do that in the course of your work, cut across or split up a precinct, an existing precinct line?

THE WITNESS: In order for School Boards, I have done it three times.

THE COURT: All right.

THE WITNESS: But for municipalities I would have to count them up. I would say about five or six times.

THE COURT: And the same Act 925 applies to municipalities as it does to School Boards, doesn't it?

THE WITNESS: I don't think it does.

THE COURT: Or does it?

THE WITNESS: I don't think that it does.

THE COURT: All right. What about Police Juries?

THE WITNESS: No, sir. I think that it only applies to School Boards, and in large Police Juries, it is a technical question or interpretation as to are they splitting or creating precincts, because once they do the splitting in—

THE COURT: Who is they?

THE WITNESS: The Police Juries. Once a Police Jury in its own reapportionment effort splits precincts and then by legal description, and by mapping, and by ordinance creates this new plan, then they have created new precincts. [122] So they have split, but they create at the same time. I hope that I am making myself clear.

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Testimony of Appellant-Intervenors' witness Thelma Harry – Cross Examination by Appellee

[132]

* * * * *

BY MR. THORNTON:

Q. Ms. Harry, how many seats do you believe that the black [133] community should have on the Bossier Parish School Board?

A. I would like to see them have three.

Q. All right. And why do you think that they should have three?

A. Because there are twelve now, and if you have three, we could depend on at least two to get some of our concerns through.

THE COURT: Two out of twelve would be able to do it?

THE WITNESS: Well, I want a back-up system.

BY MR. THORNTON:

Q. Do you think that the seats should have any relationship to the black proportion of the population?

A I do.

Q. Have you been told that by anyone?

A. No. That is my own function.

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Testimony of United States Government's witness Johnny Gipson—Cross Examination by Appellee

[138]

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BY MR. THORNTON:

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Q. Wait a minute, let me finish my question for the record. On the School Board, how many seats do you think that the black community ought to have? Now go ahead.

A. At least two, based on the population given, about two.

[139]

Q. Based on what, sir?

A. On the population, two.

Q. The percentage of blacks of the population?

A. Yes.

* * * * *

Testimony of United States Government's witness Jeffrey Dewayne Darby—Cross Examination by Appellee

[145]

* * * * *

BY MR. THORNTON:

Q. Mr. Darby, how many seats do you think that the black community deserves to have under the Voting Rights Act on the Bossier Parish School Board?

A. Sir, unrealistically I wish that we had six. But realistically, two.

Q. And why two?

A. To represent the population of Bossier Parish, the minority population.

Q. Because that is their proportion to the entire population?

A. (Nodding head.)

Q. You have to speak out, sir.

A. Yes, sir.

Q. Mr. Darby, remind me, I couldn't find it right quickly. When did you run for the City Council?

A. 1989.

Q. And you won that seat, did you not?

A. Yes, sir.

Q. Was that from a predominantly white district?

A. Yes, sir, it was.

Q. What was the racial composition of that district?

[146]

A. Approximately twenty-two percent minority, and the rest majority.

Q. Seventy-eight or something like that?

A. Um-hum.

Q. And how many votes did you win by?

A. Approximately thirty votes.

Q. Did you make a race issue?

A. No, sir.

Q. Did you make—as an issue did you make the concerns, or what we would call the real issues of the election a part of your campaign?

A. I am not understanding your question.

Q. Well, I am not saying it very well, either. The issues of the campaign, were they—other than racial, I mean what the community ought to do, what the Police Jury ought to do about the problems, the sort of issue, is that what you ran on?

A. Yes, sir, pretty much.

Q. Okay. And in the meantime, after you had been elected, but before you ran again, the City Council changed their districts, did they not?

A. Yes, sir.

Q. That was after the Police Jury had changed its districts?

A. Yes, sir.

[147]

Q. And you were not, I think, happy with the district which—or which was drawn around your residence?

A. This is correct.

Q. But you ran and you lost, did you not?

A. Yes, sir.

Q. Lost to what, Mr. Swayer [*sic*]?

A. Right.

Q. Who was white?

A. Yes, sir.

Q. And how many votes did you lose by?

A. Between fifty and fifty-eight.

* * * * *

Testimony of United States Government's witness Dr. Richard L. Engstrom—Cross Examination by Appellee

[151]

* * * * *

BY MR. THORNTON:

* * * * *

Q. You have told us in your declaration what methodology you used to come to the conclusions that you came to, and the conclusions appear to be, sir, that in your opinion people in Bossier Parish vote by race, is that correct?

A. I believe that the conclusion is that in the election[s] that I have studied, there is evidence that voters divide along racial lines.

Q. Okay. I stand corrected. Is that a fair statement, what you are telling us?

A. In the elections in which I was—I believe I was able to determine candidates of choice, that tends to be the case, yes.

Q. Okay. I want to ask you some questions about this study that you made of Bossier Parish. How many times have you been to Bossier Parish?

A. Oh, I don't know the total number, but it wouldn't be very many.

THE COURT: What do you mean by that?

THE WITNESS: Maybe two or three times, not connected to the study.

[152]

THE COURT: What did you do there?

THE WITNESS: Went to a famous barbecue restaurant I remember the last time.

THE COURT: In Shreveport?

THE WITNESS: In Bossier City. I was in Shreveport and specifically went to Bossier City for barbecue. I did not go to Bossier Parish for the purpose of the study, and I am from New Orleans, so I am not up there too often.

BY MR. THORNTON:

Q. Of any of the political contests that form a part of your study, I want to ask you some questions about them. Did you ever talk to any of the candidates?

A. For the purpose of the study?

Q. Yes?

A. No.

Q. Did you ever make a study of what the issues of the political –

THE COURT: Wait a minute, you didn't get an answer to the first question. Did you ever talk to the candidates?

MR. THORNTON: I think he said no.

THE COURT: Oh, I didn't hear.

THE WITNESS: Not for the purpose of the study. I have met some since and I have talked with them, but not prior to preparing this, nor for the purpose of preparing this study.

[153]

THE COURT: All right. I am sorry. I didn't hear you.

BY MR. THORNTON:

Q. Do you know what the issues, campaign issues were, in any of those elections that you have talked about?

A. No, I do not.

Q. Did you make any study of what kind of campaign organization each of the candidates might have put together?

A. No, I did not.

Q. Did you have any idea of how much money they might have had in their political coffers to get across their programs?

A. No, I did not.

Q. Do you happen to know whether any of them had debates at a public forum and a face-to-face confrontation with the public?

A. No, I do not.

Q. Did you happen to know anything about the backgrounds of any of those candidates in terms of political experience or education?

A. Not for the purpose of assessing racial divisions and voter candidate preferences, no.

Q. All right. Ought those factors that I have asked you about, and other factors, don't they sometimes have some sort of impact on the outcome of political campaigns?

A. There are all sorts of things that can have an impact on [154] the outcome of political campaigns. I was addressing a specific research question, did African

American voters and non-African American voters in these elections, in which they were given a choice, between or among African American and white candidates, have different candidate preferences, and to answer that question, I don't need to do all of these other things that you are asking me about.

Q. All right, sir. Tell me this, then. Have you ever examined any parish in Louisiana, or any county anywhere in the United States, in which racial preference doesn't have some impact on the outcome of the election?

A. I can't recall doing—I mean doing an analysis of one in which there wasn't some impact, in which voters didn't divide along racial lines, certainly, to some extent.

Q. You have a doctor of philosophy in the field of political science, do you not?

A. That is correct.

Q. And so within your area of opinion, do you have any benchmark in which you can compare Bossier Parish with any other parish or county as to whether racial preference affects the outcome of political campaigns?

A. Well, I haven't been asked to make that comparison, so I haven't come up with a benchmark, and I haven't even thought about what the benchmark might be if I needed one.

Q. Well, if other parishes and other counties allowed [155] racial preference to have impact on election results, and you tell me that Bossier also has, how have we advanced human knowledge by that fact?

A. Well, I don't know if we have advanced human knowledge through my study. It may be very well that the people in the audience find that I have documented the obvious in this analysis, that African American voters in Bossier Parish vote for African American candidates usually when given that choice, and white voters do not. I mean I don't know that I have advance knowledge, but those are the results of my studies.

Q. But you don't know any other area that doesn't have a certain amount of that, do you?

A. Well, I don't know what you mean by a certain amount of that, and I haven't studied all areas. Usually when I do these types of analyses, it is in the areas in which there are voting rights issues. So it is not uncommon to find this. In fact usually this is the case.

Q. Well, you are a political scientist. Isn't it true that sometimes Catholics won't vote for Protestants?

A. Excuse me, Catholics will vote for Protestants?

Q. I say—listen to me, Doctor.

A. Okay.

Q. Isn't it true that in—just in your experience, and certainly in your area of academic excellence, isn't it [156] sometimes true that Catholics don't vote for Protestants, or Protestants don't vote for Catholics?

A. Oh, I suppose that that is sometimes true. However, not anywhere to the extent that we have racial divisions. Race is the major demographic variable in American politics.

Q. Everywhere —

A. There is no other division in American politics that even comes close to it.

Q. Everywhere —

THE COURT: Did you ever hear of Mayor Daley in Chicago?

THE WITNESS: Me?

THE COURT: Yes.

THE WITNESS: Have I heard him?

THE COURT: Have you ever heard of him, I said?

THE WITNESS: Senior or junior? The current one or the previous one? I have heard of both.

THE COURT: Both.

THE WITNESS: Okay.

THE COURT: Did you ever hear of a man named Boss Hague in Jersey City, New Jersey?

THE WITNESS: Yes.

THE COURT: Did you ever hear what used to happen the Sunday before elections in every Catholic parish in Jersey City?

[157]

THE WITNESS: Well, I don't know for sure, but I assume that there was probably a visit to the church.

THE COURT: I said in every Catholic parish?

THE WITNESS: No.

THE COURT: It was a visit to the church. Did you ever hear what happened in those churches?

THE WITNESS: I guess that I have not heard that.

THE COURT: You haven't, and you have a Ph.D. from the University of Kentucky? No wonder they didn't win the basketball tournament this year. I just

thought of those two examples as a result of his questions. You have not heard of that kind of discrimination?

THE WITNESS: No. I mean I don't know what happened at Catholic parishes a week before elections, or the Sunday before elections in Jersey City, no.

THE COURT: You don't know anything about—

THE WITNESS: I am fairly familiar with Chicago, but —

THE COURT: What happened there?

THE WITNESS: When, before elections?

THE COURT: Yes. What happened in 1968 there, or late 1960 there?

THE WITNESS: I don't recall what happened in 1960.

THE COURT: All right. I was thinking about the presidential election in 1960.

[158]

THE WITNESS: Oh,

THE COURT: You are a political scientist.

THE WITNESS: Well, I mean—I assume at that point you are talking about late election returns being reported.

THE COURT: I am talking about the same subject that Mr. Thornton is asking you about, sir.

THE WITNESS: Whether Catholics vote for Protestants, or whether there are times when they don't? I mean—

THE COURT: Well, the question is there. I am not going to restate the question for you, sir. You either answer it or you don't answer it. I don't care. You do or don't.

THE WITNESS: Well, I thought you were asking if there were times when Catholics don't vote for Protestants, and I said that I suspect that that can be the case.

THE COURT: You don't know of any instance though, is that what you are saying?

THE WITNESS: When Catholics didn't vote for Protestants? Catholics voted for Kennedy in 1960, but not to the percentage, I don't believe, that we generally find African Americans voting for African Americans, nor were Protestants as opposed as we usually find along racial lines. I still maintain that race is a far more serious demographic [159] division in American politics than religion.

THE COURT: All right, sir, thank you. I hear your opinion.

BY MR. THORNTON:

Q. Doctor Engstrom —

THE COURT: Please don't misunderstand me. The court has no opinion on this. I am just asking you for your knowledge.

BY MR. THORNTON:

Q. As a political scientist, do you have an opinion as to whether or not separating races and focusing on the differences, and assigning black majority and white majority districts on the basis, say, of proportion in the population, do you have an opinion as to whether that

ameliorates and eases racial hostility, or would you think that it might increase or exacerbate hostility?

A. I believe that over time, if it provides African Americans with an opportunity to elect candidates of its—of their choice, I think that it will ameliorate it. I think that as we see African Americans elected to public office, and serving in public office, some of the fears of white voters will recede, and the horrible things that they may expect to result from the elections of blacks, at least among some white voters, will recede into the background, and we will probably, at that point, hopefully in the future, begin [160] to have elections that are driven less by race.

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Testimony of United States Government's witness Dr. Richard L. Engstrom—Redirect Examination by Appellants

[166]

* * * * *

BY MS. HUME:

Q. Doctor Engstrom, when Mr. Thornton was asking you about whether you conversed with the candidates, and visited the parish, knew anything about the campaign issues, is it a standard practice in your area of expertise and its statistical methodology in analyzing electoral behavior to look at these kinds of factors in your study?

A. It would depend on the research question being addressed. If one is trying to do a causal analysis of why voters vote the way that they do, then one would certainly go on and look at other variables.

But if one is simply addressing an empirical question, do African American voters and non-African American voters have different candidate preferences, then that is not the appropriate analysis.

You simply look at the voters, and the way that the votes have been cast, and using the best available data that you can obtain, see if there are indications of whether you can identify those candidate choices, and whether they are different.

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Testimony of Appellant-Intervenors' witness William S. Cooper—Cross Examination by Appellee

[177]

* * * * *

BY MR. THORNTON:

Q. Now listen to me very carefully. In Cooper one and Cooper two, was your motive in drawing those districts as you drew them, and splitting the precincts as you have described, were you trying to draw it in such a way that there would be two majority black districts?

A. I was asked to assess whether or not it was possible to create two majority black districts using traditional redistricting criteria, and yes, that was the result.

Q. That was your instructions?

A. Right.

Q. All right.

THE COURT: What are the traditional criteria in [178] your view?

THE WITNESS: Well, in my opinion the three fundamental criteria are one person one vote, making sure that the deviation for a particular district does not exceed five percent, assuring that a district is contiguous. In other words, that all pieces are joined together.

And finally I think in an area where there is a significant minority population, you have to follow the Voting Rights Act and produce a majority black district, providing that it can be done. There are places where it cannot be done, but in the case of Bossier Parish I believe that it could be done there.

THE COURT: Is there anything about compactness?

THE WITNESS: Compactness is a very fuzzy term. I try to make the district as shapely as possible, but in point of fact you are frequently dealing with oddly shaped jurisdictional boundaries, oddly shaped municipal our county boundaries, I should say, oddly shaped precincts.

The distribution of population can be kind of unusual, so that it is really very, very difference to look at a plan and signal out a district and say that it is not compact or that it is compact without knowing a little bit more about what is beneath the lines so to speak.

THE COURT: So the court's use of the words compactness are not necessarily correct?

[179]

THE WITNESS: Well, I think that it is laudable goal, and I sort of know what compactness is, as we sort of know what beauty is and truth is, but it is very hard to define, and ultimately, I attempt to make a district as shapely as possible, as square and neatly bounded.

But I don't—I don't employ, for example, a measure of compactness to determine whether or not a district meets a certain compactness standard, nor do most governing bodies that I encounter. It is highly unusual to ever see a jurisdiction—in fact, I have never seen a jurisdiction produce a compactness measure as a part—as part of their redistricting process at the local level anyway.

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WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A. ESTABLISHMENT AND ORGANIZATION

§ 52. Election and qualification of members; term of office

A. There shall be elected by the qualified voters of each parish police jury ward, or the equivalent thereof, of each parish of the state a member of the school board of the parish for each police juror in said ward, or the members of a parish school board shall be elected by the qualified voters in accordance with the school board reapportionment plan then in effect as authorized by law, or the members of a parish school board shall be elected in accordance with any special law applicable to the board, as the case may be. Members of parish school boards shall be elected at the congressional elections. Members elected in 1986 and thereafter shall serve four-year concurrent terms beginning January 1 following their election.

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WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND REORGANIZATION

[The following is from the 1982 Main Volume:]

§ 71.3. Procedure for accomplishing reapportionment; special election districts; effective date of same

A. Each of the parish and city school boards shall use the federal census of 1970 as the basis upon which to accomplish reapportionment, provided however, that each of said school boards may authorize the taking of a special census to use as a basis for reapportionment. To this end, each of said school boards may employ qualified firms to take such special census, and may employ such other consultants, attorneys, etc. as it deems desirable in order to assist such board in such reapportionment.

B. Each of said boards, after determining the number of member of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable, which districts need not be coterminous with, nor have any relation to, the wards or precincts that may be created by the police jury or cities or towns within and for said parish or city, but any such special school board election districts created as a result of this Subpart must be compact and contiguous. The board may provide that all or part of its members shall be elected from such districts and

may provide that one or more of its members may be elected at large from each of such districts.

C. Repealed by Acts 1980, No. 285, § 9, eff. July 14, 1980.

D. The special school board election districts provided for herein shall be for the purpose only of electing school board members and shall not be for the purpose of levying taxes or issuing bonds. The creation of such special election districts shall not affect existing tax or bonding districts and same shall remain in full force and effect as otherwise provided by law.

Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.; Acts 1975, No. 432, § 1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND REORGANIZATION

[The following is from the 1995 Pocket Part:]

§ 71.3 Procedure for accomplishing reapportionment, special election districts; effective date of same

[See main volume for A]

B. Each of said boards, after determining the number of members of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable. These districts need not be conterminous with the wards that may be created by any governing authority, but any such special school board election districts created as a result of this Subpart shall be compact and contiguous. After January 1, 1984, the boundaries of such election districts shall contain whole election precincts established by the parish governing authority under R.S. 18:532 or 532.1. The board may provide that all or part of its members shall be elected from such districts and may provide that one or more of its members may be elected at large from each of such districts.

Amended by Acts 1982, No. 558, § 1, eff. July 22, 1982.

[See main volume for C and D]

E. (1) The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1.

(2)(a) Notwithstanding the provisions of R.S. 17:71.3(E)(1) or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may, in the creation of its reapportionment plan, divide a precinct into portions which are bounded by visible features which are census tabulation boundaries. No such precinct shall be divided into more than two school boards districts. No school board district shall contain more than two divided precincts.

(b) The provisions of this Paragraph shall be applicable only in cases in which the number of members of the school board is not equal to the number of members of the parish governing authority of the parish in which the school board is domiciled.

(c) The provisions of this Paragraph shall not be constructed as authority for a school board which has adopted or accomplished reapportionment or is able to reapportion itself using whole precincts to divide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1992, unless a school board receives an objection letter to its reapportionment plan from the Department of Justice. In such event the school board shall use the provisions of this Paragraph to satisfy the objections of the Department of Justice if said objections would require a precinct to

be divided and the provisions of this Paragraph shall be null and void after such reapportionment is complete.

(3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may create school board election districts that subdivide one or more precincts. No such precinct shall be subdivided into more than two school board districts. No school board district shall contain more than two subdivided precinct portions in addition to any whole precincts contained therein.

(b) The provisions of this Paragraph shall be applicable only in parishes having a population of ten thousand or fewer according to the latest decennial census and in which there are fifteen or fewer election precincts.

(c) The provisions of this Paragraph shall not be construed as authority for school board which is able to reapportion itself using whole precincts to subdivide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1993, provided that if the United States attorney general objects to the reapportionment plan of a school board operating under the provisions of this Paragraph, the school board may act under the provisions of this Paragraph to create a reapportionment plan to which the attorney general interposes no objection, if the plan would require one or more precincts to be subdivided. Following the

adoption of such plan, the provisions of this Paragraph shall be null and void.

Added by Acts 1992, No. 925, § 1. Amended by Acts 1993, No. 286, § 1, eff. June 2, 1993.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 5. PRIMARY AND GENERAL ELECTIONS
PART II. ELECTION OFFICIALS
SUBPART A. GENERAL PROVISIONS

§ 425.1. Consolidation of polling places; reduction of voting machines and election officials

A. Notwithstanding the provisions of R.S. 18:424 and 425 or any other provision of law to the contrary, in an election, including the election of any public official, where more than one polling place is within the same location, the parish board of election supervisors may consolidate polling places in that location for that election and may reduce the number of voting machines to be used in the election below the number fixed by R.S. 18:1363 and, in such case, shall notify the parish custodian of voting machines and the commissioner of elections of the number of machines to be prepared and delivered for the polling places so consolidated.

B. When the parish board of election supervisors consolidates polling places as authorized by Subsection A of this Section, it shall appoint a commissioner-in-charge to serve at each such consolidated polling place and may reduce to not less than two the number of commissioners and alternate commissioners to be appointed to serve at each such polling place.

Added by Acts 1986, No. 705, § 1.

WESTS LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 5. PRIMARY AND GENERAL ELECTIONS
PART V. VOTERS AND VOTING
SUBPART B. PLACES FOR VOTING

§ 532. Establishing of precincts

A. Subject to the provisions of R.S. 18:532.1 and 1903, the governing authority of each parish shall establish precincts, define the territorial limits for which each precinct is established, prescribed their boundaries, and designate the precincts. The governing authority of each parish shall be ordinance adopt the establishment and boundaries of each precinct in accordance with the timetable as set forth herein and in accordance with R.S. 18:532.1.

B. (1) Each precinct shall be a contiguous, compact area having clearly defined and clearly observable boundaries coinciding with visible features readily distinguishable on the ground such as designated highways, roads, streets, rivers, or canals, except where the precinct boundary is coterminous with the boundary of a parish or an incorporated place when the boundaries of a single precinct contain the entire geographic area of the incorporated place.

(2) No precinct shall be wholly contained within the territorial boundaries of another precinct, except that a precinct which contains the entire geographical area of an incorporated place and in which the total number of registered voters at the last general election was less than two hundred fifty may be so contained.

(3) No precinct shall contain more than two thousand two hundred registered voters within its geo-

graphic boundaries. Within thirty days after the completion of each canvass, the registrar of voters of each parish shall notify the parish governing authority of every precinct in the parish which contains more than two thousand two hundred registered voters within its geographic boundaries. Within sixty days of such notification, the parish governing authority shall divide such precincts by a visible feature in accordance with R.S.18:532.1.

C. Each person governing authority shall provide and maintain at all times a suitable map showing the current geographical boundaries with designation of precincts and a word description of the precinct geographical boundaries. Each parish governing authority shall send a copy of each map, with description attached, to the registrar of voters, the secretary of state, and the commissioner of elections. The map may be composed of one or more sheets but each sheet shall not exceed three feet by four feet. The map shall include all existing roads, streets, railroads tracks, and drainage features but shall not include underground utility lines, land use and zoning symbols or shadings, symbols for vegetation cover, topographic contour lines, and similar items that obscure the basic street pattern and names. All features, names, titles, and symbols on the map shall be clearly shown and legible. The map sheet of the entire parish shall be on a scale of one inch equals one mile to one inch equals two miles. Map sheets of each incorporated place within the parish shall be on a scale of one inch equals eight hundred feet to one inch equals sixteen hundred feet. Each map sheet shall indicate the date of the base map or the date of last revision. Wherever the boundaries of a precinct or

incorporated place are coterminous, they shall be clearly indicated at such.

D. The parish governing authority shall also furnish, a map clearly indicating the boundaries of each parish governing authority district, school board district, special election district, representative district, and senate district.

E. (1) In complying with the provisions of this Section for the establishment of precincts and the prescription of their boundaries, each parish governing authority and registrar of voters shall coordinate with the secretary of the Senate and the clerk of the House of Representatives, or their designees, pursuant to their authority to submit a plan for census data for reapportionment under the provisions of Chapter 13 of Title 18 of the Louisiana Revised Statutes of 1950, and shall adopt or adjust precinct boundaries as may be necessary to comply with this Section.

(2) Each parish governing authority shall by ordinance adopt a proposal for the establishment or adjustment of precinct boundaries, in compliance with this Section, no later than June 15, 1986, provided that any establishment of a precinct or adjustment of a precinct boundary to comply with this Section shall be effective for the following purposes at the following times:

(a) Not later than January 1, 1990, for the purpose of establishing block boundaries for the 1990 federal decennial census.

(b) Not later than forty-five days prior to the opening date for qualifying as a candidate for any election held at the 1991 gubernatorial primary election, for all purposes. Within fifteen days after the adoption of the ordinance, the parish governing authority shall

send to the secretary and the clerk a certified copy of the ordinance and a copy of a map showing the new boundaries together with a written description of such boundaries.

(3) If any parish governing authority fails to comply with the provisions of this Section by June 15, 1986, the secretary of the Senate and the clerk of the House of Representatives, or their designees, shall immediately notify the attorney general of such noncompliance. The attorney general shall, upon receipt of such notice, in accordance with R.S. 18:537 institute an action against said governing authority to compel compliance with this Section.

(4) Notwithstanding the provisions of R.S. 18:532.1(A) and (B) or any other law to the contrary, the proposed precinct boundaries submitted to the United States Bureau of Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census shall be the precinct boundaries of any parish in which the parish governing authority has failed to adopt by ordinance on or before December 31, 1988 a proposal for the establishment or adjustment of precinct boundaries as required by this Section. The precinct boundaries established pursuant to the provisions of this Paragraph shall be effective as provided in R.S.18:532(E)(2).

Amended by Acts 1982, No.559, § 1, eff. July 22, 1982; Acts, 1985, No. 670, § 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1988, No. 329, § 1; Acts 1988, No. 403, § 1, eff. July 10, 1988; Acts 1990, No. 629, § 1; Acts1992, No. 788, § 1, eff. Jan. 1, 1993; Acts 1992, No. 803, § 1.

* * * * *

§ 532.1 Changing precinct boundaries

A. The parish governing authority shall have authority, in accordance with this Section, to change the configuration, boundaries, or designation of an election precinct. Any change so determined shall be adopted by ordinance of the parish governing authority. Within fifteen days after adoption of the ordinance, the parish governing authority shall send to the secretary of state a certified copy of the ordinance and a copy of the map showing the new precinct boundaries and designations together with a written description of such boundaries. The parish governing authority shall comply with the provisions of R.S. 18:941 when changing precinct boundaries.

B. After June 15, 1986, a parish governing authority shall only change a precinct by dividing the precinct into two or more precincts except:

(1) Repealed by Acts 1990, No. 629, § 2.

(2) When in order to make it more convenient for voters to vote, or to facilitate the administration of the election process, or to accomplish reapportionment, it becomes necessary to consolidate all or part of a precinct with adjacent precincts, a part or parts may be consolidated but only when the parts that are joined are in the same voting district.

(3) Any establishment, division, or consolidation of precincts as provided in Paragraphs (1) and (2) herein shall be considered a change in precincts boundaries and shall be subject to the requirements of this Section.

C. (1) The parish governing authority shall comply with the provisions of R.S. 18:532(A), (B), and (C) when

changing any precinct boundary. Prior to January 1, 1993, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature which is a tabulation boundary depicted on United States Bureau of the Census maps prepared for the 1990 federal decennial census. After December 31, 1992, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.

(2)(a) In determining features to be used as precinct boundaries, the parish governing authority shall consult with the secretary of the Senate and the clerk of the House of Representatives or their designees. The parish governing authority shall submit proposed changes in precinct boundaries to the secretary and the clerk or their designees on United States Bureau of the Census maps prepared for the 1990 federal decennial census and, where practicable, by electronic medium. No change in a precinct boundary may be made by the parish governing authority without prior review and approval by the secretary and the clerk or their designees, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed precinct change coincides with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.

(b) The secretary of the Senate and the clerk of the House of Representatives or their designees shall send

a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the secretary of the Senate and the clerk of the House of Representatives or their designees fail to respond within forty-five days after the receipt of the proposed precinct changes, the proposed visible feature for precinct boundaries shall be deemed to be approved by the secretary of the Senate and the clerk of the House of Representatives or their designees.

(3)(a) In addition to the requirements of Paragraph (2) of this Subsection when the proposed precinct change involves a consolidation authorized by Paragraph B(2) of this Section, prior to adoption by ordinance, the parish governing authority shall submit proposed changes of the consolidation to the commissioner of elections. No change in a precinct consolidation may be made by the parish governing authority without prior review and approval by the commissioner of elections, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed consolidation of the precincts establishes a precinct or precincts where all parts of each proposed new precinct are in the same voting district.

(b) The commissioner of elections shall send a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the commissioner of elections fails to respond within forty-five days after the receipt of the proposed precinct consolidations, the proposed consolidations shall be deemed to be approved by the commissioner of elections. No precinct shall be consolidated until all local governing authorities and the parish or city school board within

the area affected by the consolidation have completed redistricting and been precleared by the United States Department of Justice.

D. In accordance with R.S. 18:1903, on and after January 1, 1989, no election precinct shall be created, divided, abolished, or consolidated, or the boundaries thereof otherwise changed between January first of any year which last digit is nine and December thirty-first of any year which last digit is zero, unless ordered by a court of competent jurisdiction.

E. (1) A precinct shall not be changed, and no precinct shall be established or altered in any way as a result of annexation, alphabetical division by voter surname, or otherwise during the period commencing on the date the qualifying period opens and ending on the date of the general election.

(2) For an election which is exclusively for bonds, taxes, and other propositions or questions and for no other kind of election, a precinct shall not be changed during the period commencing on the forty-six day prior to the election and ending on the date of the election.

(3) No precinct change that is made prior to the date the qualifying period opens or, in the case of an election exclusively for bonds, taxes, and other propositions or questions, prior to the forty-sixth day before the election shall become effective for those elections, respectively, unless the information required in Subsection A herein, including a statement of no objection to the change from the United States attorney general, is received by the secretary of state prior to the date the qualifying period opens or prior to the forty-sixth day before the election, as the case may be.

F. Within fifteen days after the adoption of the ordinance as provided in the Section, the parish governing authority shall send to the secretary of the Senate and the clerk of the House of Representatives as well as the secretary of state and commissioner of elections a certified copy of the ordinance and a copy of a map showing the new precinct boundaries together with a written description of such boundaries.

G. Repealed by Acts 1993, No. 418, § 2, eff. Jan. 1, 1994.

H. The provisions of this Subsection shall supersede the provisions of R.S. 18:532.1(A), (B), and (D), and R.S. 18:1903, and any other law to the contrary.

(1) The precinct boundaries submitted to the United States Bureau of the Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census, shall not be divided, abolished, consolidated, or the boundaries otherwise changed until after December 31, 1992, unless ordered by a court of competent jurisdiction.

(2) Notwithstanding the provision contained in R.S. 18:532.1(H)(1), if a parish is unable to meet applicable state and federal guidelines in the creation of its reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary during the time period of April 1, 1991 through May 15, 1991.

(a) Such parish shall include such precinct changes in its ordinance defining such reapportionment plan.

(b) A certified copy of the ordinance including any such precinct changes and reapportionment plan must

be sent to the secretary of state, the secretary of the Senate, the clerk of the House of Representatives, and the registrar of voters of the parish within fifteen days after the adoption of the ordinance.

(c) In the event that the Department of Justice objects to a parish reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary in order to satisfy said objections of the Department of Justice.

(d) Such precincts shall not be divided, abolished, or consolidated or the boundaries otherwise changed during the time period of September 1, 1991 through December 31, 1992.

Added by Acts 1982, No. 559, § 1, eff. July 22, 1982. Amended by Acts 1985, No. 670,§ 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1987, No. 831, § 1, eff. Jan. 1, 1988; Acts 1988, No. 329, § 1; Acts 1988, No. 909, § 1; Acts 1990, No. 288, § 1, eff. July 5, 1990; Acts 1990, No. 629, § 1, Acts 1992, No. 803, § 1; Acts 1993, No. 418, § 1 eff. Jan. 1, 1994.

WESTS LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 8-A. ELECTION EXPENSES

§ 1400.1 Election costs paid by secretary of state; governing authorities; reimbursement

A. The cost of ballots and election materials used in gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the secretary of state for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) The cost of ballots and election materials used in any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the secretary of state for that purpose:

(a) A state candidate, as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of

the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A proposed constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions, on the ballot within that local jurisdiction.

C. (1) The cost of ballots and election materials used in any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of the office or the issue involved in such election.

(2) In any special election called only by a local governing authority or only by a parish or city school board solely for the purpose of voting on a proposition under Chapter 6-A of this Title, a fee of five dollars per certificate and two dollars per page shall be paid to the secretary of state for recording the process verbal as required by R.S. 18:1293.

(3) To administratively facilitate the payment of costs as provided in this Subsection, the secretary of state may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the secretary of state, and all monies so

received by the secretary of state shall be remitted to the state treasurer. If more than one governing authority is involved in an election, the secretary of state shall prorate the reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 783; § 1, eff. July 10, 1986; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

§ 1400.2. Election costs paid by commissioner of elections; governing authorities; reimbursement

A. The costs of publication of the location of polling places; of renting polling places; of drayage; of setting up voting machines; of compensating commissioners and deputy parish custodians; and of transmitting election returns for gubernatorial and elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) The cost of publication of the location of polling places; or renting places; of drayage; of setting up voting machines; of compensating commissioners

and deputy parish custodians; and of transmitting election returns for any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:

(a) A state candidate as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A proposed constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

C. (1) The cost of publication of the location of polling places; of renting polling places; of drayage: of setting up voting machines, which cost shall be ten dollars per machine; of compensating commissioners and deputy parish custodians; and of transmitting election returns for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority involved in the election and payment thereof shall be prorated among the governing authorities as equitably as possible.

(2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections who shall remit all such funds to the state treasurer. If more than one governing authority is involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 426, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, S 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

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§ 1400.3 Election expenses incurred by clerks of court and registrars of voters; payment by commissioner of elections; payment by governing authorities

A. Election expenses incurred by clerk of court and registrars of voters for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) Election expenses incurred by clerks of court and registrars of voters for any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:

(a) A state candidate, as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A propose constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

(C)(1) Election expenses incurred by clerks of court and registrars of voters for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority and payment thereof shall be prorated among the governing authorities as equitably as possible.

(2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections, who shall remit all such funds to the state treasurer. If more than one governing authority is

involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

(D) For the purposes of this Section, "election expenses incurred by registrars of voters" is defined and limited to the following:

(1) Expenses incurred by a registrar of voters to pay for one or more temporary part-time clerical employees to perform election duties and responsibilities associated with his office as provided in this Title. Such employees shall be paid at an hourly rate established by the registrar at not to exceed that of a Voter Registration Specialist in the General Schedule at the entry level as specified in the classification and pay plan of the Louisiana Department of Civil Service.

(2) Expenses incurred by a registrar of voters to pay a permanent employee below the level of chief deputy and confidential assistant to perform election duties and responsibilities associated with his office during other than normal hours of operation of his office.

(3) Expenses of an extraordinary nature incurred by a registrar of voters for an election which have received prior approval of the commissioner of elections.

(E) For the purpose of this Section, "election expenses incurred by clerks of court" is defined and limited to the following:

(1) Actual expense incurred by a clerk of court to publish notices required by law in the official journal of the parish and, to insure maximum coverage, in any other journal of the parish or political subdivision thereof. Information contained in such notices shall be limited to that required by law. The commissioner of

elections shall prescribed the size of such notices which shall be uniform throughout the state.

(2) Itemized expenses incurred by a clerk of court to conduct the general courses of instruction for commissioners as provide in R.S. 18:431(A) and the course of instruction for commissioners-in-charge as provided in R.S. 18:433(A).

(3)(a) Documented expenses incurred by a clerk of court to perform or fulfill election duties imposed by law. For the purpose of this Paragraph, such expenses shall include the following:

(i) Expenses for postage and office supplies used in connection with an election or used to fulfill an election duty imposed by law.

(ii) Expenses for rental space and instructional paraphernalia to conduct schools of instruction for commissioners and commissioners-in-charge.

(iii) Expenses for personnel used in connection with an election or used to fulfill an election duty imposed by law. Such expenses shall be itemized and reimbursement shall be authorized only for work not performed during regular office hours of the clerk of court.

(iv) Incidental expenses incurred in conducting the general courses of instruction for commissioners and the course of instruction for commissioners-in-charge. Reimbursement for such expenses shall be limited to one hundred dollars per general commissioner school and one hundred dollars for the commissioner-in-charge school. Maximum reimbursement to a clerk of court for conducting such schools shall be limited to three hundred dollars per calendar year and all reimbursements shall be deposited in the general fund of the clerk of court.

(b) The commissioner of elections shall establish rules and regulations governing reimbursement for expenses set forth herein and may establish rules and regulations to add other categories of reimbursable expenses. All reimbursements shall be deposited in the general fund of the clerk.

(4) Expenses of an extraordinary nature incurred by a clerk of court for an election which have received prior approval of the commissioner of elections.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 669, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986, Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 18. LOUISIANA ELECTION CODE
CHAPTER 5. PRIMARY AND GENERAL ELECTIONS
PART VII. FILLING OF VACANCIES
SUBPART C. LOCAL AND MUNICIPAL OFFICES

§ 602. Vacancies in certain local and municipal offices; exceptions

A. When a vacancy occurs in the office of a member of a parish or municipal governing authority or a combination thereof, a mayor, or any other local or municipal office, except an office covered by Subsections B and C hereof and except the office of judge, state legislator, or marshal of a city or municipal court, and the office is filled by election wholly within the boundaries of a local governmental subdivision, the governing authority of the local governmental subdivision where the vacancy occurs shall, within ten days, appoint a person to fill the vacancy who meets the qualifications of the office. The presiding officer of the governing authority shall not be required to vote on such an appointment to be made by the governing authority of a local governmental subdivision to be made by the governing authority of a local governmental subdivision unless a tie vote occurs thereon, in which case he shall vote to break the tie; however, in no case shall the presiding officer vote more than once on the appointment.

B. When a vacancy occurs in the membership of a city or parish school board, the remaining members of the board shall, within ten days, declare that the vacancy has occurred and proceed to appoint a person who meets the qualifications of the office to fill the vacancy. For the purposes of this Subsection, in addi-

tion to the definition of "vacancy" provided in R.S. 18:581(1), a "vacancy" in a city or parish school board office shall be deemed to have occurred when, in the case of a city school board, a member's residence no longer lies within the jurisdiction of the board or when, in the case of a parish school board, a member changes his domicile from the district he represents or, if elected after reapportionment, is domiciled outside the district he represents at the time he is sworn into office, any declaration of retention of domicile to the contrary notwithstanding.

C. When a vacancy occurs in any of the following offices, the duties of the office shall be assumed by the person hereinafter designated: (1) district attorney, by the first assistant; (2) clerk of a district court, by the chief deputy; (3) coroner, by the chief deputy; (4) sheriff, by the chief criminal deputy, except that in a parish that has both a civil sheriff and a criminal sheriff, the civil sheriff by the chief civil deputy, and the criminal sheriff, by the chief criminal deputy, respectively; and (5) tax assessor, by the chief deputy assessor, except that in any parish having a board of assessors, that board shall, within ten days, appoint an interim assessor. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes affected shall, within ten days, appoint a person having the qualifications of the office to assume the duties of the office.

D. If a vacancy is not filled within the time specified in Subsections A, B, or C herein, the governor shall fill the vacancy.

E. (1)(a) If the unexpired term of an office covered by Subsection A, B, or C above is one year or less, the

person appointed to fill the vacancy or designated to assume the duties of the office shall serve for the remainder of the unexpired term.

(b) If any member of a parish or city school board is removed or suspended from office pursuant to the provisions of R.S. 42:1411, except in the parish of Jefferson, the person appointed to fill the vacancy or to perform the official acts, duties, and functions of that office during the period of suspension shall be eligible in the next election as a candidate for the office to which he is appointed.

(2)(a) If the unexpired term exceeds one year, the governing authority of the local government subdivision in which the vacancy occurs, or the school board when the vacancy occurs in its membership, or the governor when a vacancy occurs in the office of district attorney or in an office for which there is not a single governing authority or as provided in Subsection F, within ten days after the vacancy and shall specify in the proclamation, in accordance with R.S. 18:402, the dates on which the primary and general elections shall be held and, in accordance with R.S. 18:467, 467.1, and 468, the dates of the qualifying period for candidates in the special election. In selecting the dates for such special elections, the governing authority or school board as the case may be, may choose a gubernatorial or congressional election date, if such date is available within a year of the occurrence of the vacancy or may select an election date in accordance with R.S. 18:402. In the case in which the governor shall first choose a gubernatorial or congressional election date. If no such date is available within a year of the occurrence of the vacancy, the governor shall then select an election date

in accordance with R.S. 18:402. If the governing authority or school board fails to issue the proclamation.

(b) Immediately thereafter the governing authority, the school board, or the governor, as the case may be, shall publish the proclamation in the official journal of each parish in which the election is to be held.

(c) Within twenty-four hours after issuing the proclamation, the authority or authorities ordering the special election shall send a copy of the proclamation, by certified or registered mail, to the clerk of the district court for the parish in which the vacancy occurred. If the vacancy occurred in the parish of Orleans, the copy of the proclamation shall be so mailed to the clerk of the criminal district court. If the vacancy occurs in an office which affects more than one parish, a copy of the proclamation shall at the time be so mailed to the clerk of each of the parishes. A copy of the proclamation also shall be mailed to the secretary of state at the same time and in the same manner.

(d) Within twenty-four hours after he receives the copy, the secretary of state shall notify all election officials having any duty to perform in connection with a special election to fill such vacancy, including the parish boards of election supervisors for the parish or parishes in which the vacancy occurred.

(3) The special election shall be held, without the necessity of a call by the governor, except in the case of a vacancy in the office of district attorney. When a special election is required, the appointee or person designated to assume the duties of the office shall serve only until the successor is elected and takes office.

(4) If the unexpired term of a municipal office covered by Subsection A is one year or more, but the

vacancy occurs within one year of the regular municipal primary election for that office, no special election will be called and the appointee shall serve for the remainder of the term of office.

F. Whenever multiple vacancies in a local or municipal governing authority or in a school board covered by Subsection A or B of this Section reduce the membership of such governing authority or board below the number of total members required to constitute a quorum to conduct official business, the remaining members shall immediately inform the governor of the existence of the vacancies. Within ten days after he receives this notice, the governor shall make appointments to fill all the vacancies and shall issue a proclamation calling special elections to fill such vacancies if special elections are required under the provisions of this Section.

G. The provisions of this Section shall apply to all local governmental subdivisions, including those operating under the provisions of a legislative charter, but shall not apply where the filling of a vacancy otherwise is provided for by the constitution or by the home rule charter or home rule plan of government of the affected local governmental subdivision. Such constitutional home rule plan provisions shall govern the filing of the vacancies.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 17. EDUCATION
CHAPTER 1. GENERAL SCHOOL LAW
PART II. PARISH SCHOOL BOARDS
SUBPART A-1. REAPPORTIONMENT AND REORGANIZATION

§ 71.5. Reapportionment; reorganization

By resolution adopted pursuant to R.S. 17:71.4, each school board shall reapportion itself based upon each federal decennial census, or a special census as authorized by R.S. 17:71.3(A). Such resolution shall be adopted on or before December thirty-first of the second year following the year in which the population of this state is reported to the president of the United States for each decennial census, unless an election of the members of the school board is to take place in the second year after reporting of the decennial census, in which case, the resolution is to be adopted no later than March first of the second year after reporting of the decennial census. Reapportionment shall not reduce the term of any member who is then seated and elected. Each board shall submit its reapportionment plan to the United States Department of Justice no later than one hundred twenty days after adoption of the resolution pursuant to R.S. 17:71.4, as required by the Voting Rights Act of 1965, as amended, Title 42, Section 1973(a) of the United States Code and shall also submit a copy of such resolution by certified mail to the secretary of state.

UNITED STATES CODE ANNOTATED
TITLE 13. CENSUS
CHAPTER 5—CENSUSES
SUBCHAPTER II–POPULATION, HOUSING, AND UNEMPLOYMENT

§ 141. Population and other census information

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

Supreme Court Of The United States

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with No. 98-406, *George Price, et al.*, v. *Bossier Parish School Board* and a total of one hour is allotted for oral argument. The brief of the appellant is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply.

January 22, 1999

Supreme Court Of The United States

No. 98-406

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with No. 98-405, *Janet Reno, Attorney General* v. *Bossier Parish School Board* and a total of one hour is allotted for oral argument. The briefs of the appellants are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply.

January 22, 1999

FILED
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CLERK

(12) (10)

Nos. 98-405 and 98-406

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX (VOLUME 3)

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NOTICES OF APPEAL FILED: July 6, 1998
PROBABLE JURISDICTION NOTED: January 22, 1999

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B. Supreme Court's opinion dated May 12, 1997 ..... J.S. App. 29a
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COMPLAINANT'S EXHIBIT NO. 7

Cooper Plan Which He Submitted at the Trial of the *Knight* case on August 19, 1994 (Cooper Plan No. 1)

BOSSIER PARISH POPULATION	86,088	
	77.862% WHITE	20.190% BLACK
	67,030	17,381

NUMBER OF PRECINCTS 56
PLAINTIFF PLAN SPLITS 32

NUMBER OF REGISTERED VOTERS	38,350	
NUMBER OF REGISTERED BLACKS	6,010	15.67%
NUMBER OF REGISTERD ON BAFB	147	
NUMBER OF REGISTERED BLACKS ON BAFB	35	
HOW LONG IS PLAINTIFF DIST 8	30.4 MILES	34.7 DIAGONAL
HOW LONG IS PLAINTIFF DIST 9	33.5 MILES	37.0 DIAGONAL
BOSSIER PARISH LENGTH	54.3 MILES	
BOSSIER PARISH DIAGONAL LENGTH	58.6 MILES	
OUR % DEVIATION IS	-5.715- +6.036	11.751%

JEROME DARBY ELECTIONS

1983 JEROME DEFEATED THOMAS MCDANIEL (w) AND WON
1987 JEROME DEFEATED JOHNNY GIBSON (B) AND THOMAS MCDANIEL (W) AND WON WITH OVER 50% OF THE VOTE
IN 1983 AND 1987 JEROME WAS ELECTED IN A 68.183% WHITE DISTRICT
1991 JEROME WAS UNOPPOSED
IN 1991 JEROME WAS UNOPPOSED IN A 73.108% WHITE DISTRICT

Bossier Parish, LA -- Plaintiffs' Plan
12 Districts 12 Members

District	Total	Black	Total VAP	Black VAP	% Black	% Black VAP	Dev.	%Dev.	# of members
1	7426	430	5573	285	5.8%	4.8%	252	3.51%	1
2	6840	4152	4508	2440	60.7%	54.1%	-334	-4.66%	1
3	7057	1028	5403	629	14.6%	11.6%	-117	-1.63%	1
4	7043	1232	5017	698	17.5%	13.9%	-131	-1.83%	1
5	7475	549	5567	360	7.3%	6.5%	301	4.20%	1
6	7474	439	5357	310	5.9%	5.8%	300	4.18%	1
7	7207	906	4870	534	12.6%	11.0%	33	0.46%	1
8	6867	4209	4621	2680	61.3%	58.0%	-307	-4.28%	1
9	7144	781	5139	513	10.9%	10.0%	-30	-0.42%	1
10	7118	1065	4790	696	15.0%	14.5%	-56	-0.78%	1
**	7399	607	5125	362	8.2%	7.1%	225	3.14%	1
	7038	1983	4934	1297	28.2%	26.3%	-136	-1.90%	1
TOTAL	86088	17381	60904	10784	20.2%	17.7%			

MAXIMUM DEVIATION = 8.85%

IDEAL DISTRICT SIZE = 7174 Single-member

EXHIBIT A-1

Plaintiffs' 12-District Plan – Bossier Parish, LA (Bossier City Area by census block)

EXHIBIT A-3

416

Source: 1990 Census T R and PL94-171 files

Plaintiffs' 12-District Plan -- Bossier Parish, LA (by census block with town boundaries)

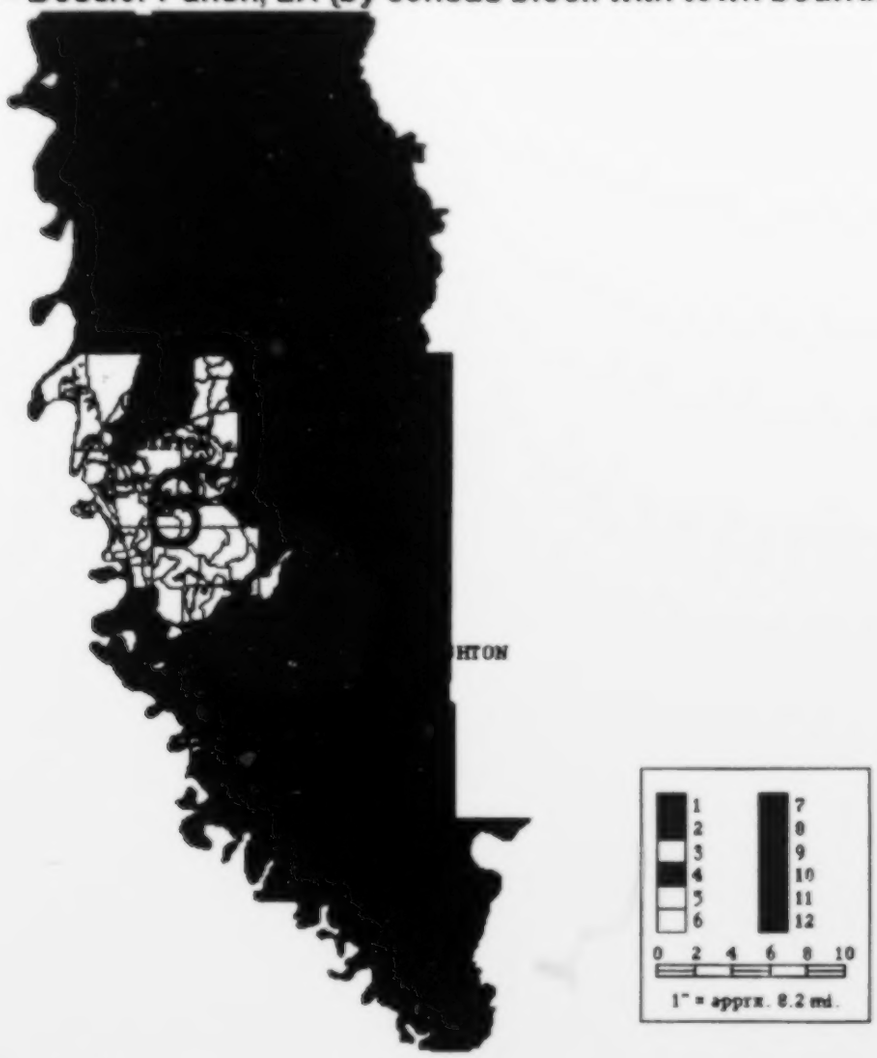

EXHIBIT A-2

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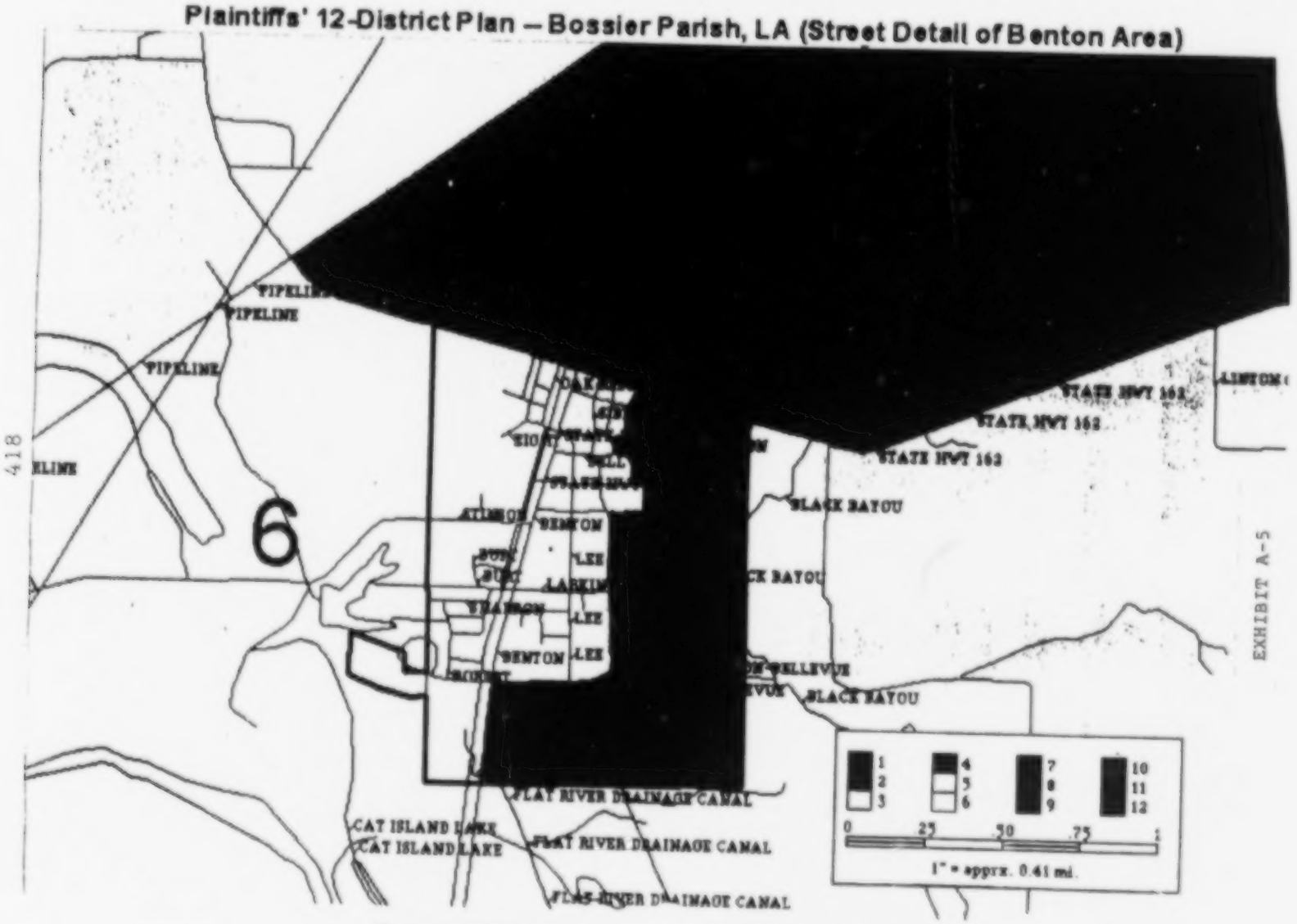
Source: 1990 Census T 3 and PL94-171 files

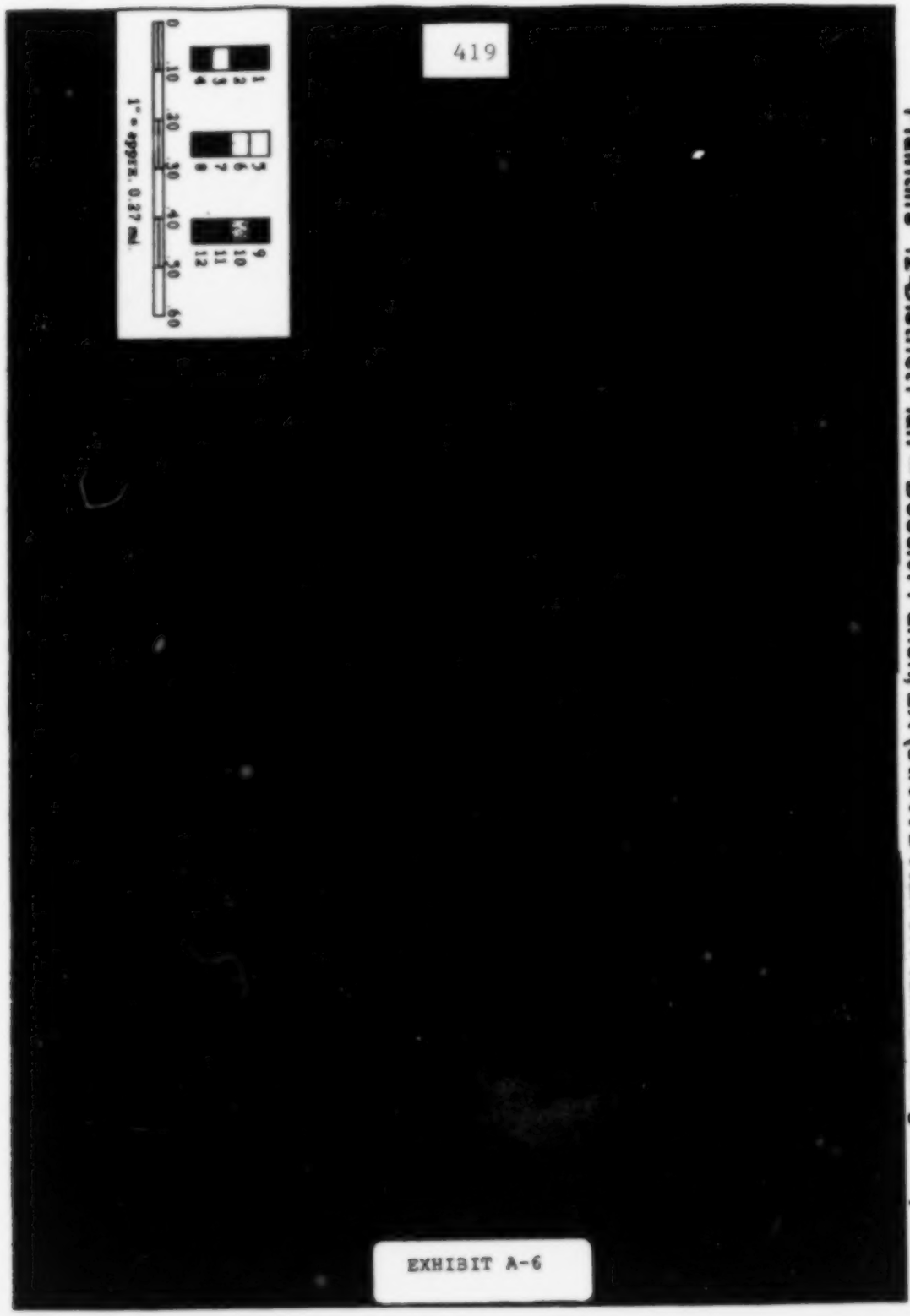
Plaintiffs' 12-District Plan – Bossier Parish, LA (Street Detail of Benton Area)



Source: 1990 Census Tl . and PL94-171 files

Plaintiffs' 12-District Plan – Bossier Parish, LA (Street Detail of Part of Bossier City)

Source: 1990 Census Tl . and PL94-171 files



COMPLAINANT'S EXHIBIT NO. 10

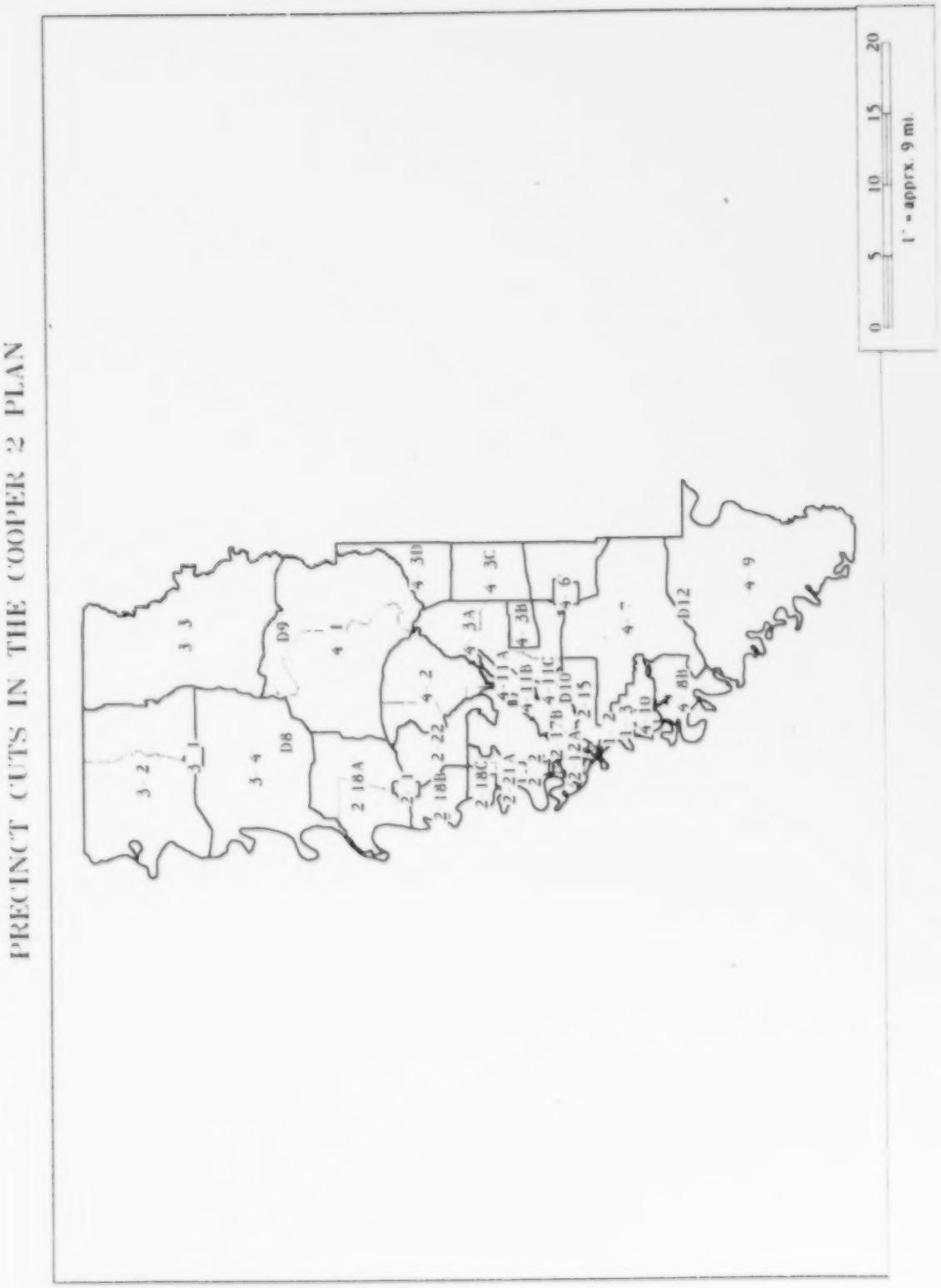
Breakdown by Mr. Gary Joiner of the Racial Composition of the Population in the Splits in the Precincts Found in Cooper Plan No. 2

PRECINCT CUTS IN THE COOPER 2 PLAN

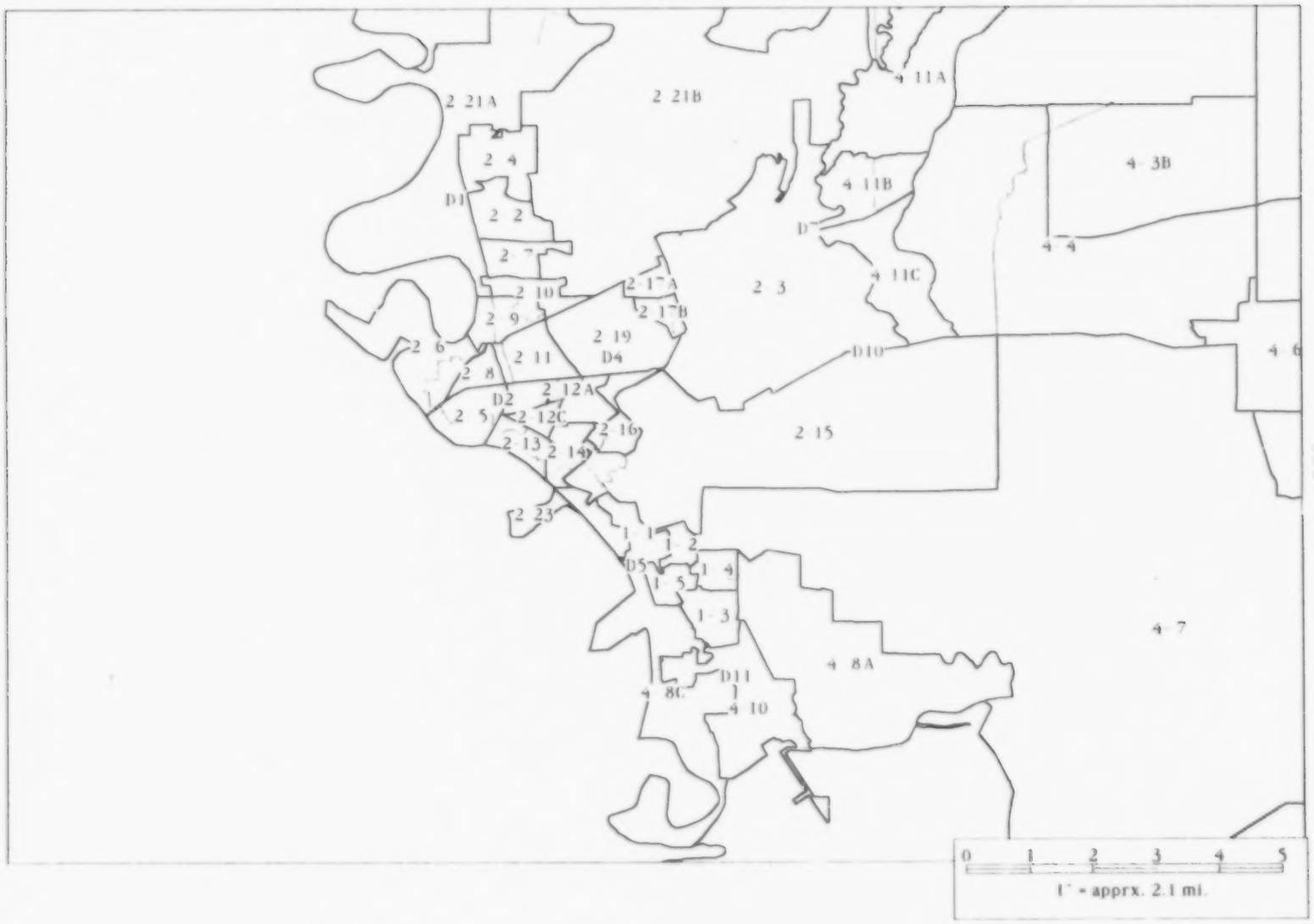
DETAILING POPULATION AND RACIAL CHARACTERISTICS

SOURCES: PLAN DEVELOPED BY WILLIAM COOPER
U.S. BUREAU CENSUS TIGER FILES
U.S. BUREAU OF THE CENSUS PL 94-171 DATA

Prepared by Gary D. Joiner
Precision Cartographics
P.O. Box 44144
Shreveport, LA 71104
February 14, 1995



PRECINCT CUTS IN THE COOPER 2 PLAN



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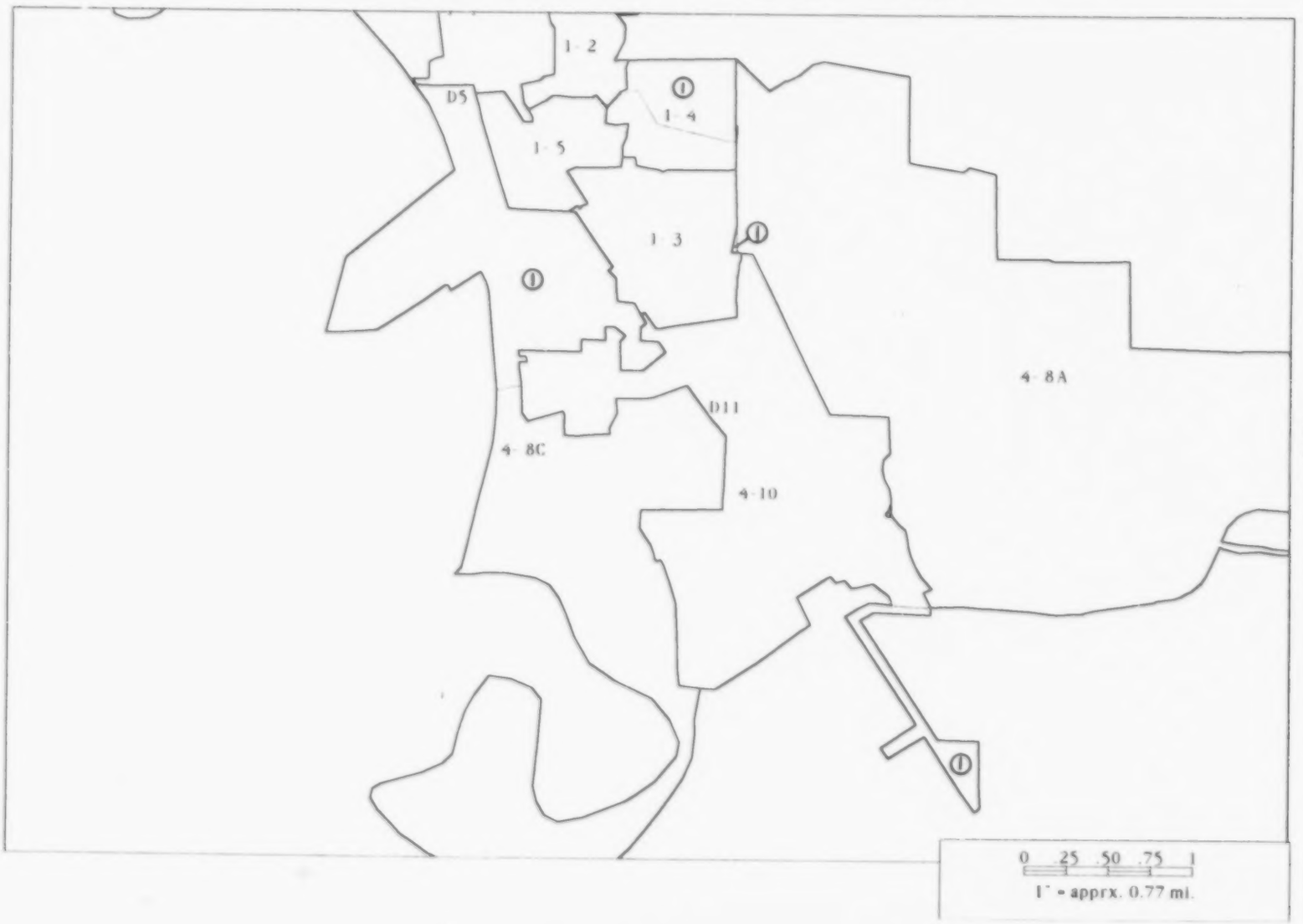

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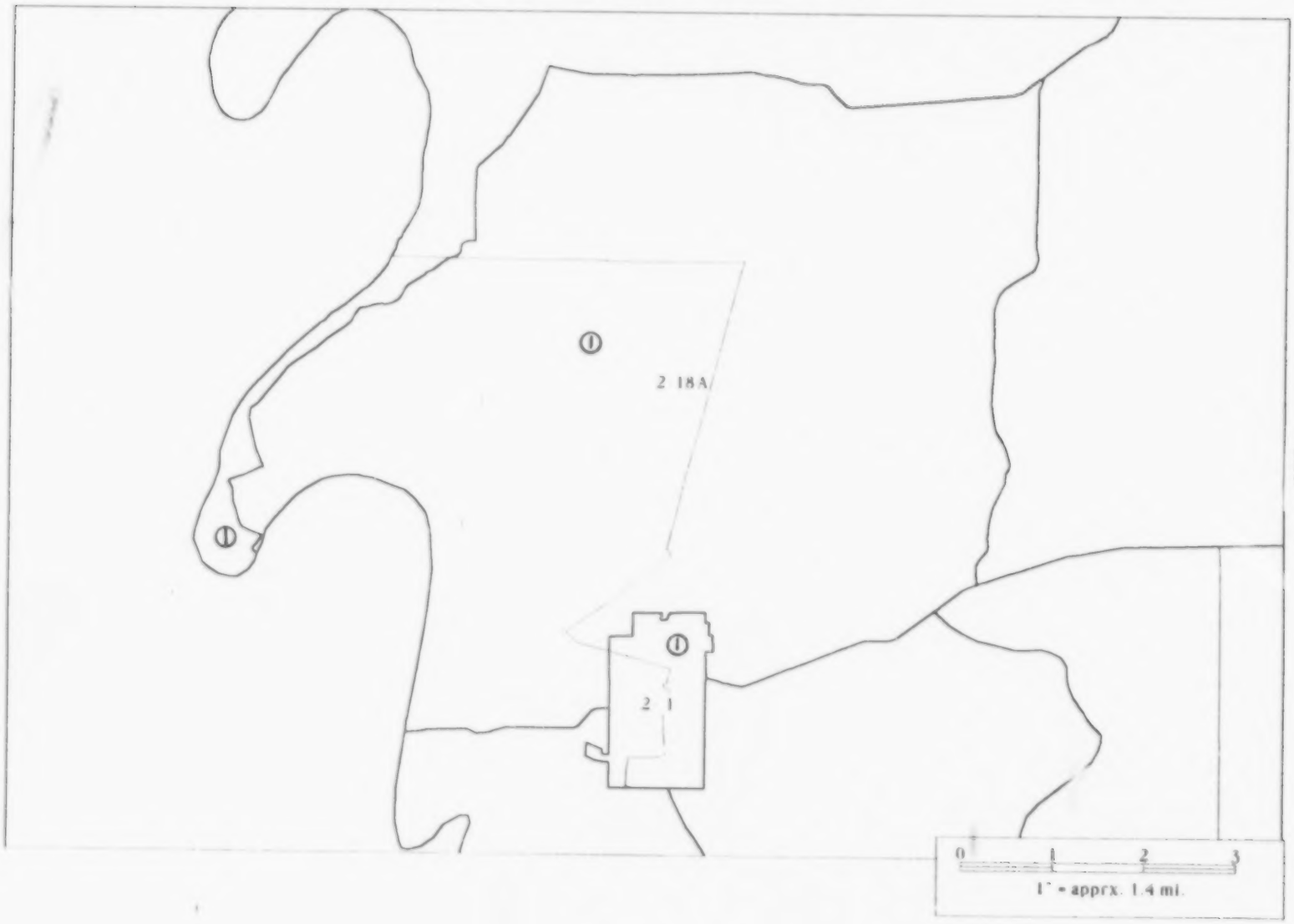

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PRECINCT CUTS IN THE COOPER 2 PLAN

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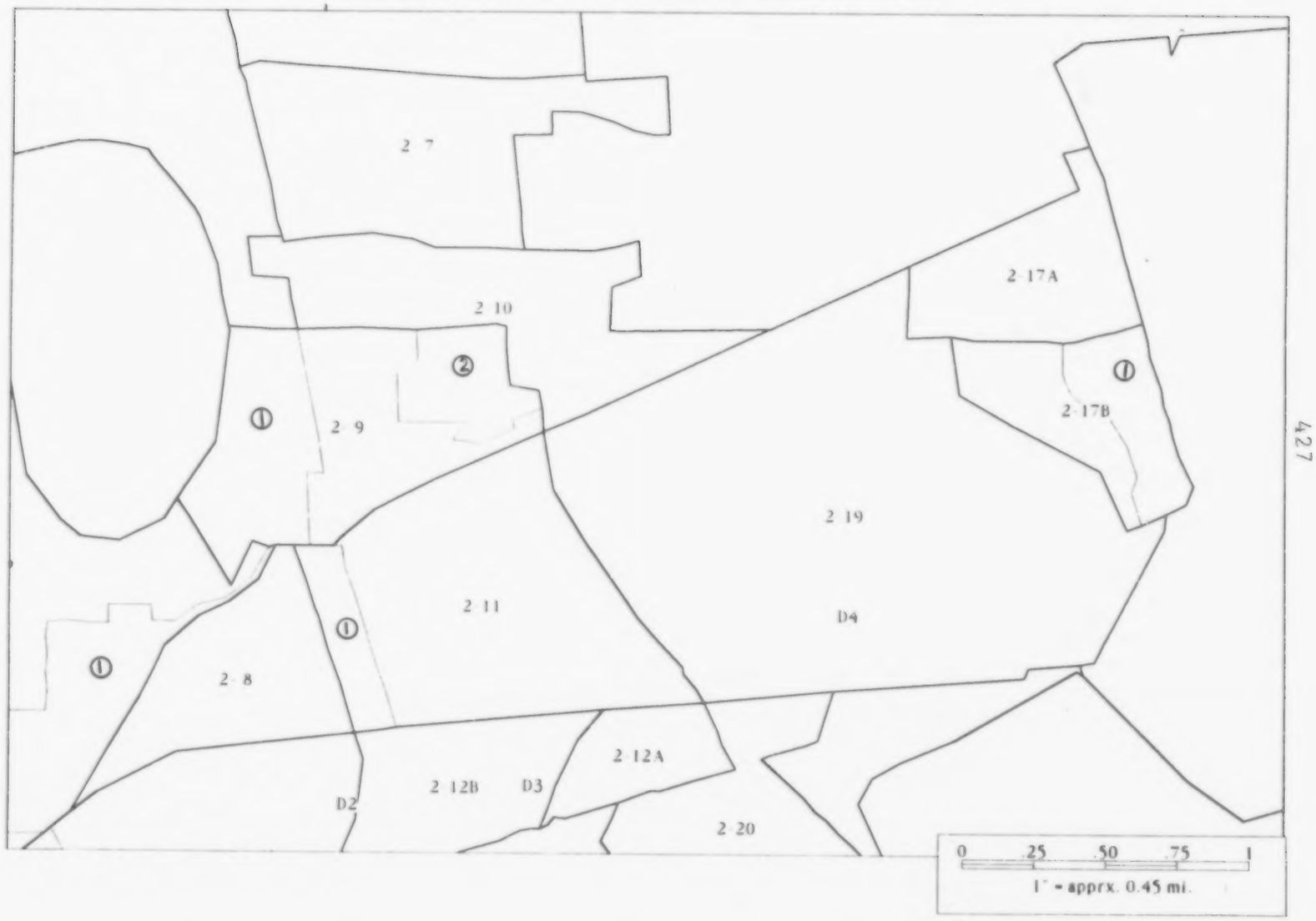

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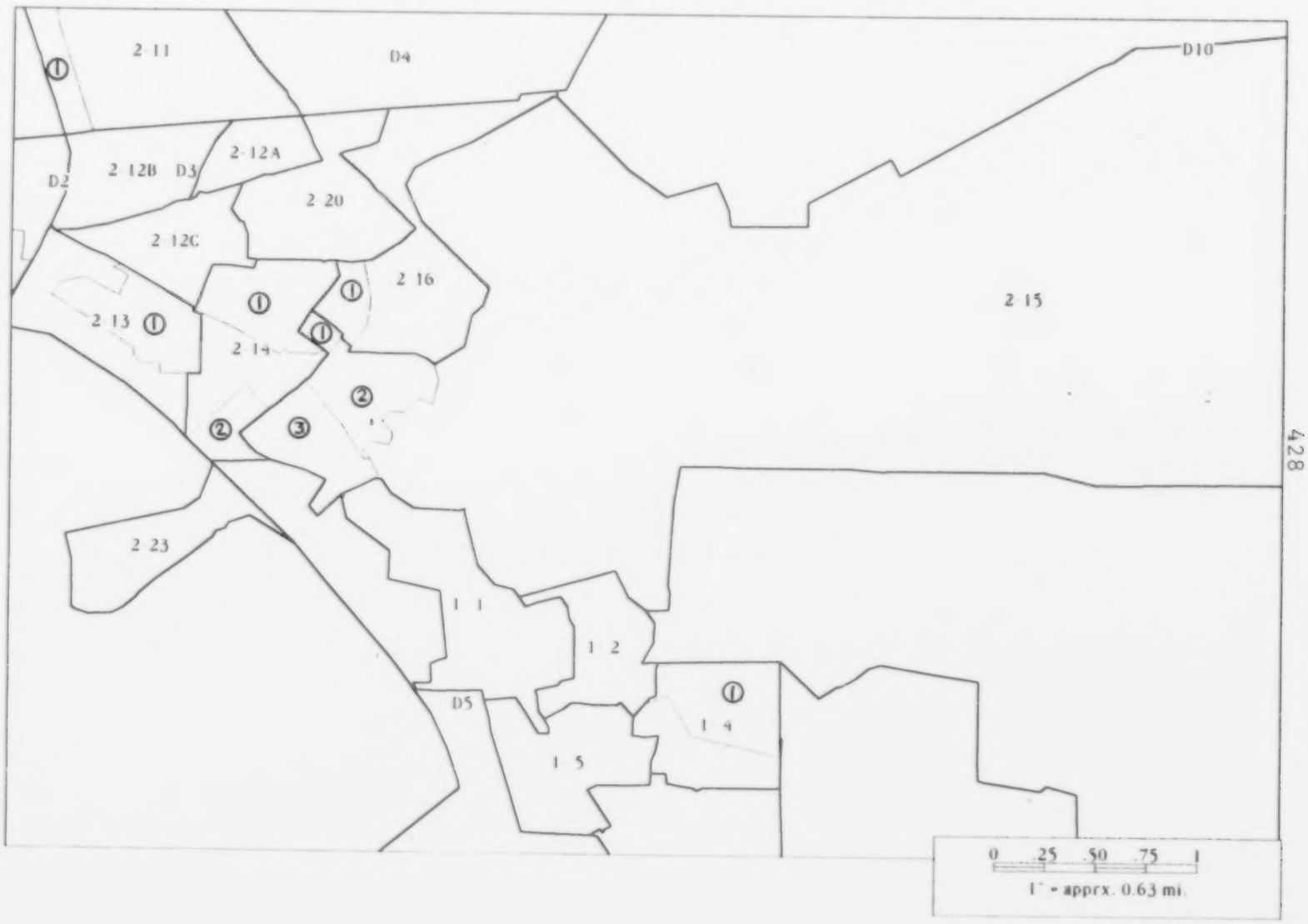

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PRECINCT CUTS IN THE COOPER 2 PLAN

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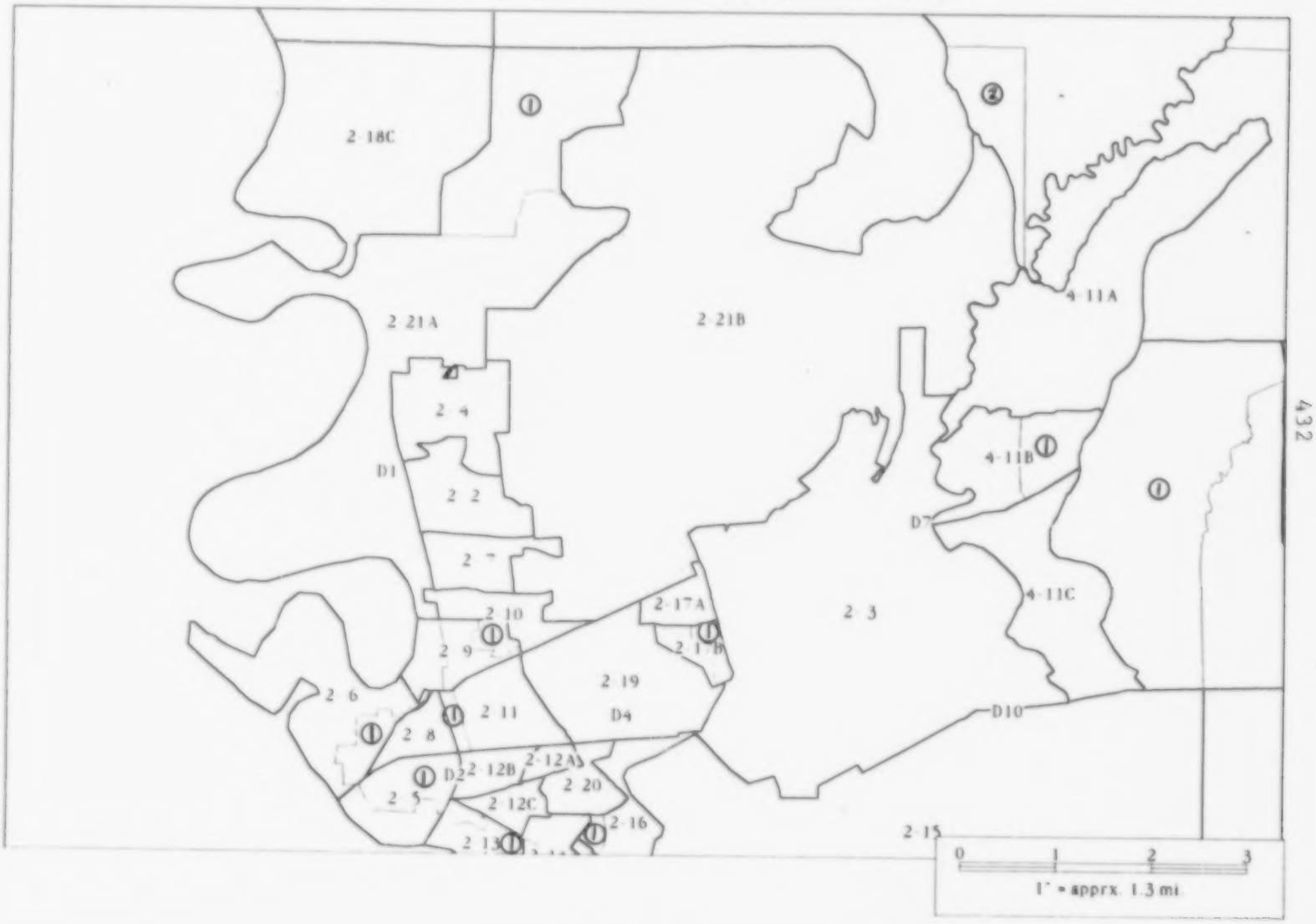

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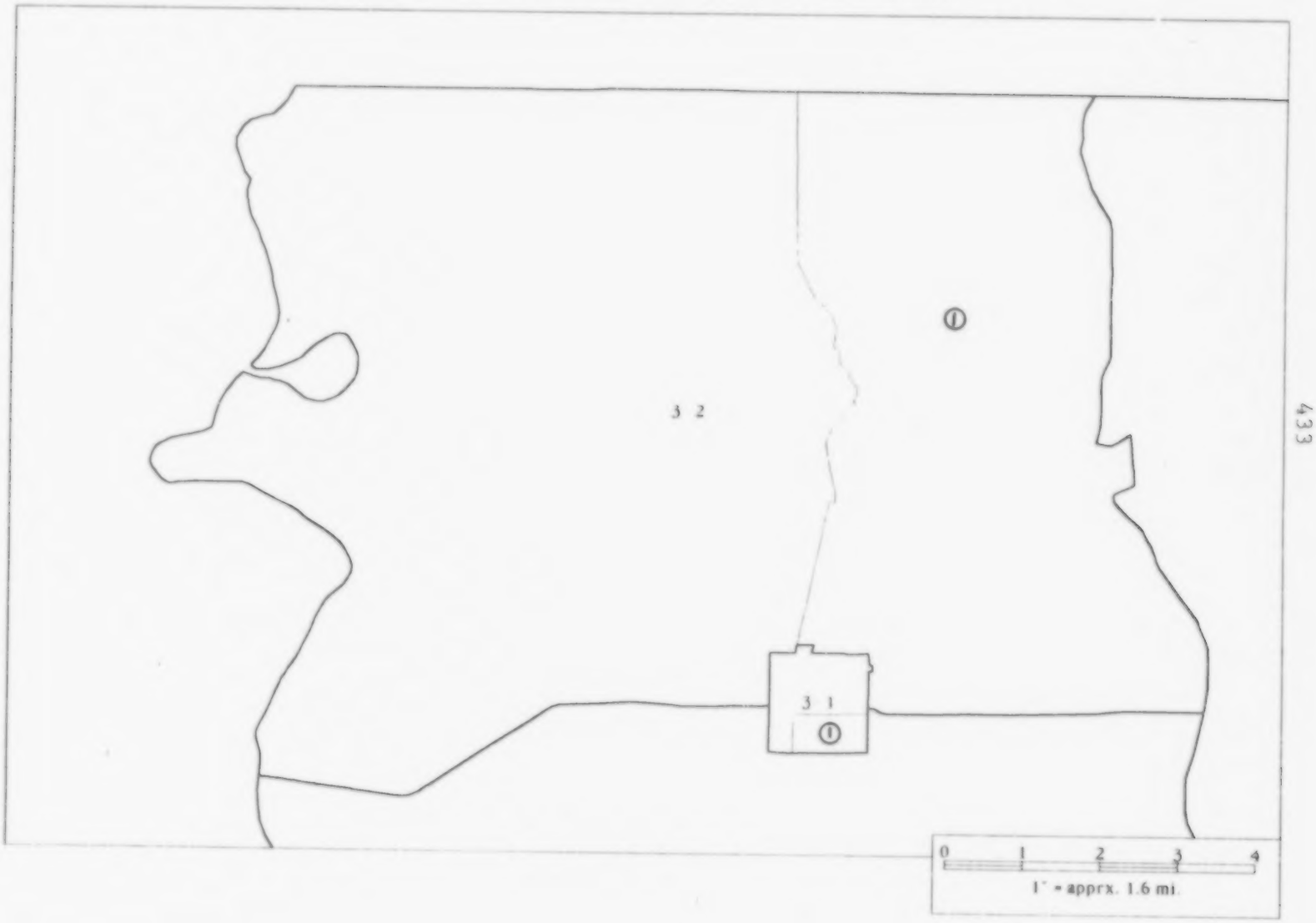

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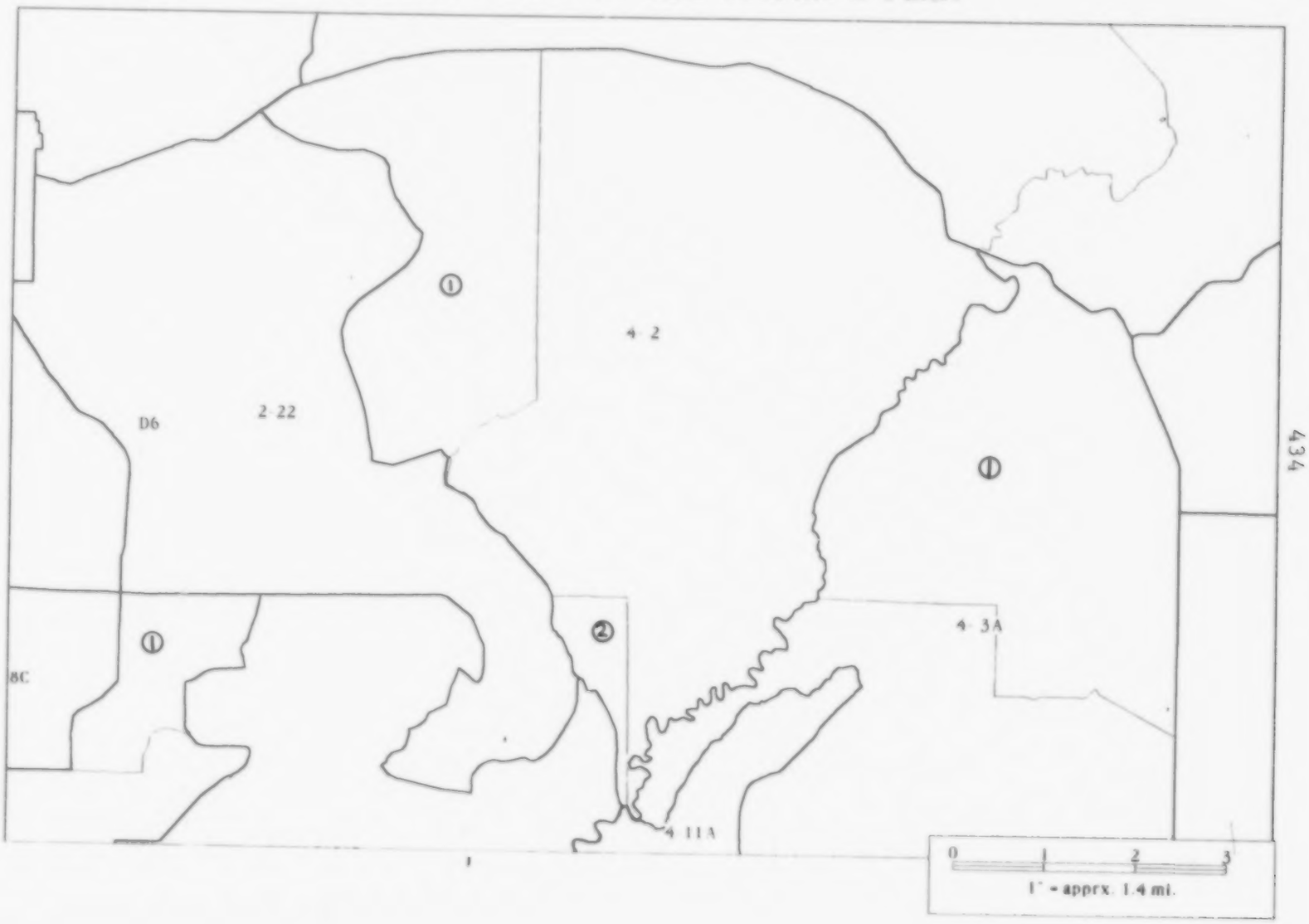

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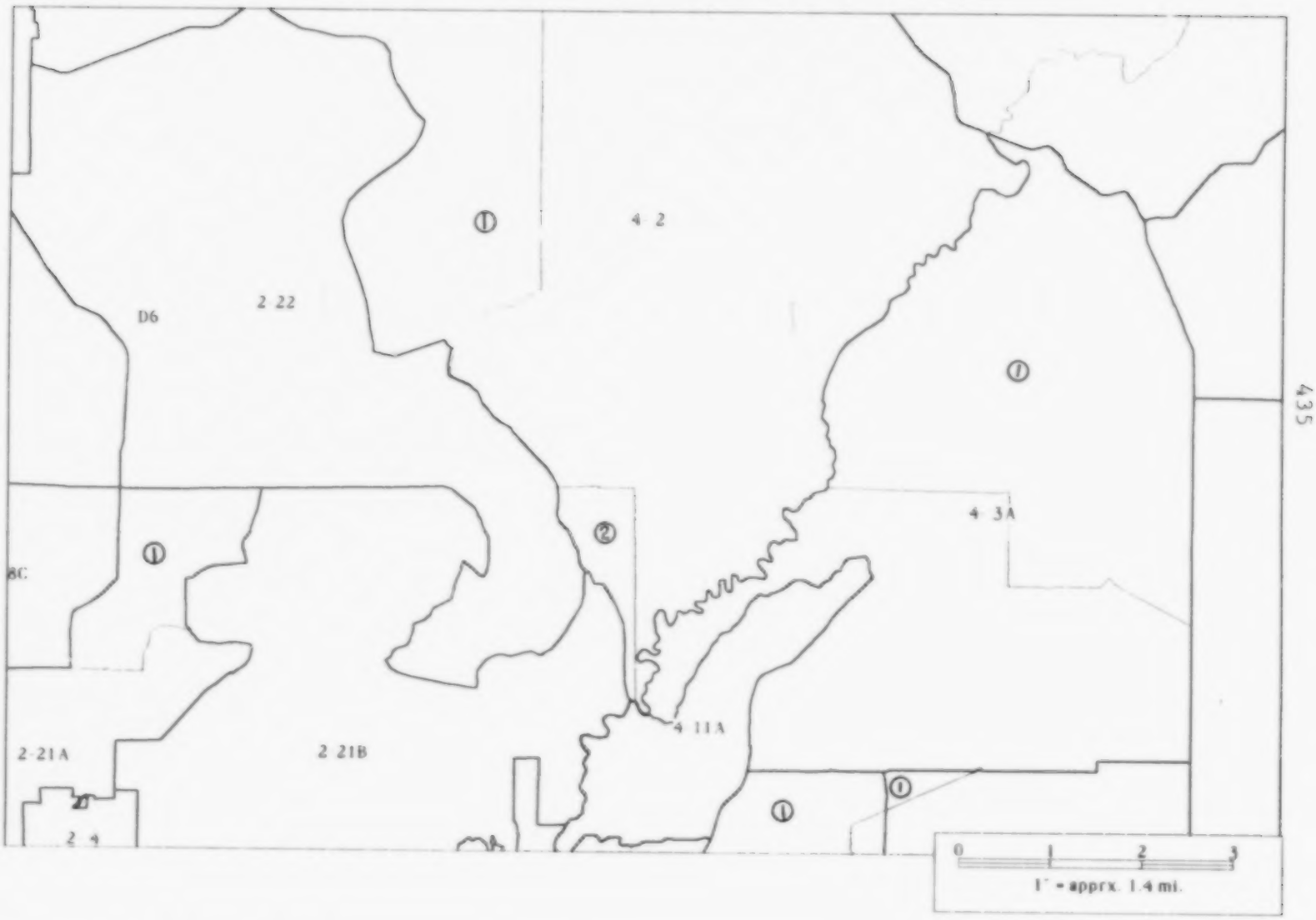

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PRECINCT CUTS IN THE COOPER 2 PLAN

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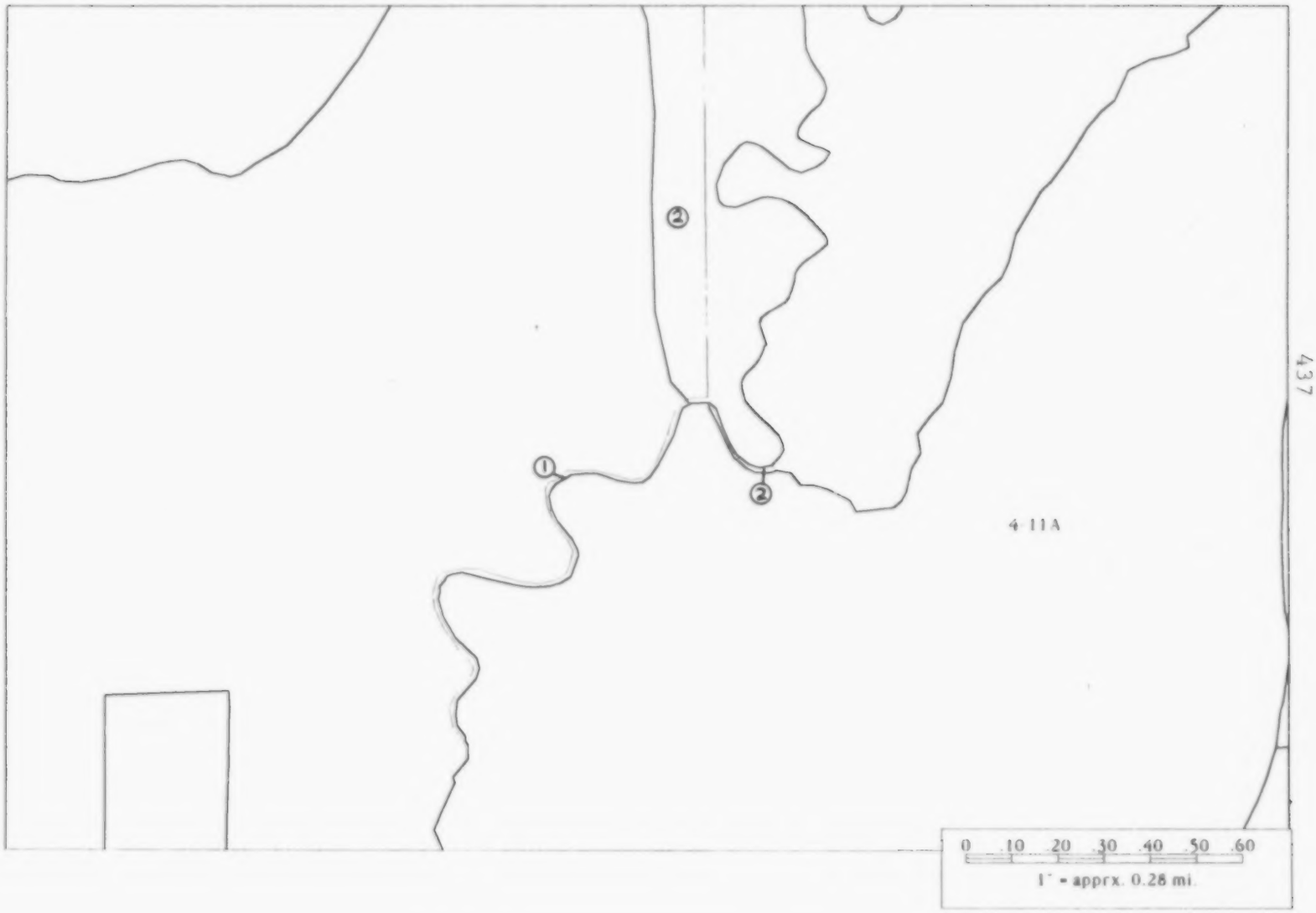

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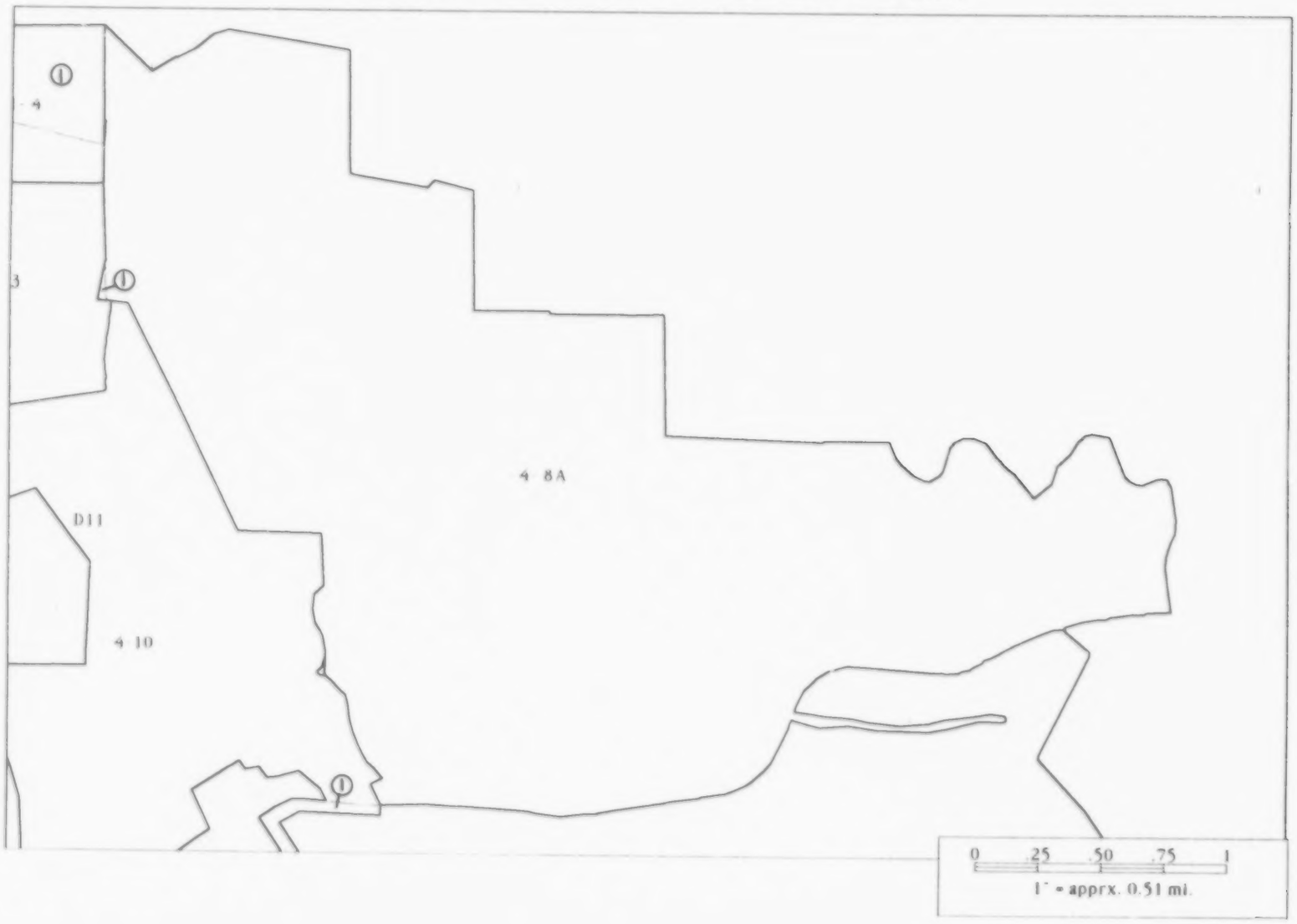

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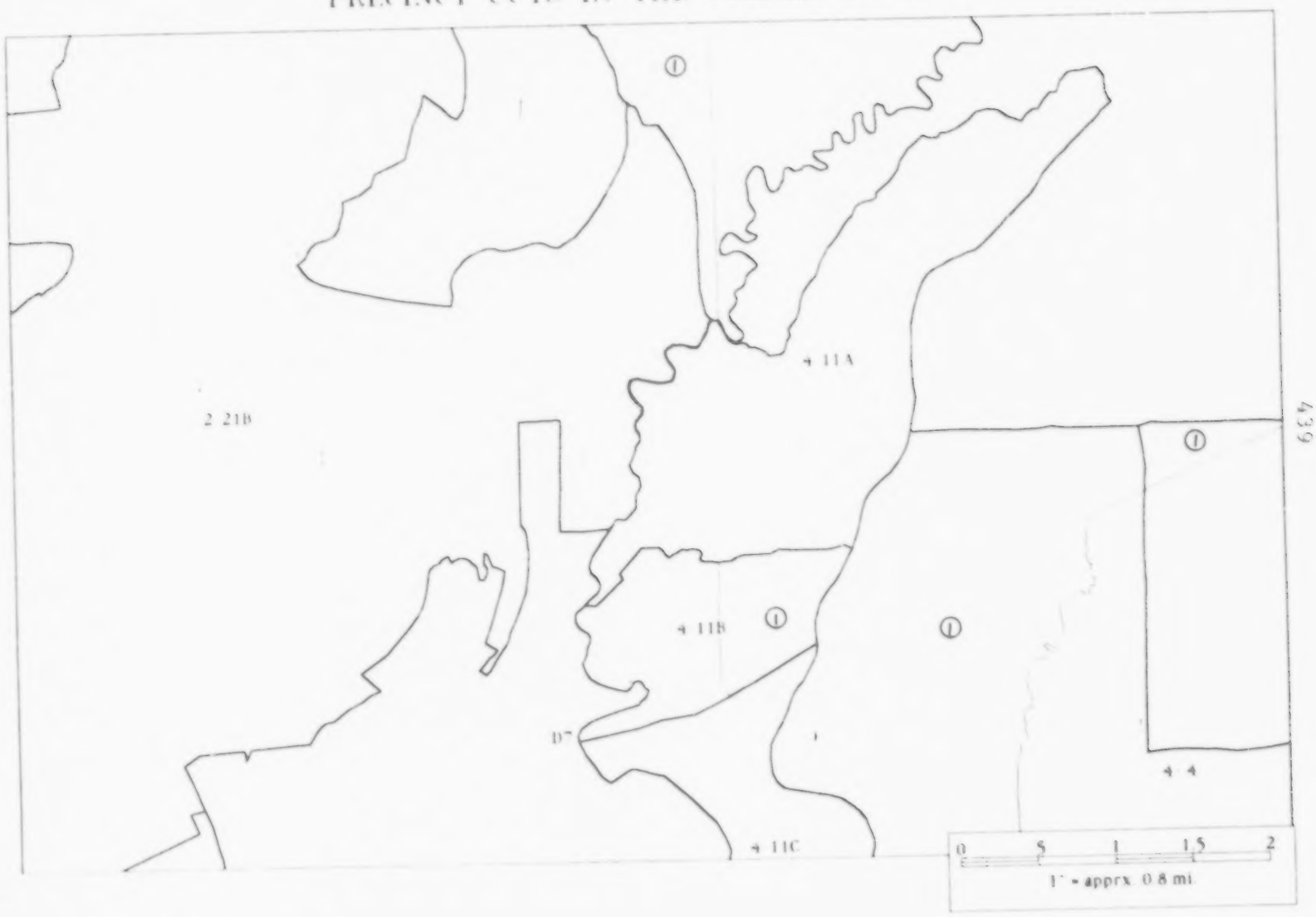

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COOPER 2 PLANS

COOPER 2 PLAN PRECINCT CUTS DETAILING POPULATION AND RACIAL CHARACTERISTICS

PRECINCT 1-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
14	0.416485	1-4	1972	1727	135	1276	95	1450	73.53	87.58	6.85	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1306	0.018363	22015010898408		70	65	0	52	0	58			5
1325	0.01047	22015010898409		73	68	3	55	3	60			5
1327	0.009423	22015010898410		83	75	6	54	5	61			5
1330	0.009182	22015010898417		51	44	4	34	4	39			5
1309	0.008645	22015010898413		22	22	0	18	0	18			5
1328	0.008719	22015010898412		42	39	2	30	1	32			5
1329	0.008524	22015010898411		45	38	4	31	2	36			5
1306	0.008584	22015010898405		41	37	4	28	2	30			5
1307	0.011613	22015010898407		53	42	3	28	3	36			5
1331	0.011437	22015010898416		65	56	9	41	6	47			5
1305	0.097861	22015010898401B		241	210	19	159	12	182			5
1371	0.002137	22015010898415A		8	8	0	6	0	6			5
1332	0.021586	22015010898414		84	78	7	52	5	57			5
1302	0.015263	22015010898406		86	81	5	52	5	57			
	CUT TOTALS:			964	861	86	640	48	717			
	AFTER CUT:			1008	868	69	636	47	733	72.72%	85.91%	6.85%

PRECINCT 2-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
21	1.915879	2-1	2047	1166	848	837	540	1401	68.44	56.96	41.33	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1880	0.166709	22015011103512A		129	125	0	81	0	85			6
2180	0.011701	22015011103505		0	0	0	0	0	0			6
2181	0.022085	22015011103504		67	59	0	40	0	43			6
2184	0.038329	22015011103507		97	73	22	58	15	75			6
2185	0.007583	22015011103508		33	33	0	22	0	22			6
2188	0.046338	22015011103509		68	46	22	37	15	52			6
2188	0.005971	22015011103514		40	40	0	21	0	21			6
2150	0.188125	22015011103406A		114	98	16	66	7	73			6
2154	0.020536	22015011103429		0	0	0	0	0	0			6
2159	0.012872	22015011103428		13	13	0	12	0	12			6
2166	0.003972	22015011103435		8	8	0	6	0	6			6
2167	0.013851	22015011103436		20	20	0	17	0	17			6
2169	0.003143	22015011103434		2	2	0	2	0	2			6
2170	0.00734	22015011103438		10	10	0	9	0	9			6
2172	0.009325	22015011103439		1	1	0	1	0	1			6
2176	0.038461	22015011103502		54	50	4	37	2	39			6
2183	0.012359	22015011103506		56	52	4	42	2	44			6
2179	0.009584	22015011103503		0	0	0	0	0	0			6
2187	0.007363	22015011103513		47	33	12	25	4	30			6
2175	0.00815	22015011103440		0	0	0	0	0	0			6

440

2151	0.003875	22015011103431	12	8	4	4	4	8				6
2152	0.004766	22015011103430	18	16	2	11	2	13				6
2161	0.003007	22015011103432	5	5	0	3	0	3				6
2164	0.003322	22015011103433	9	7	2	4	2	6				6
2177	0.032501	22015011103501	50	44	4	35	2	37				6
2173	0.008377	22015011103441	5	5	0	3	0	3				6
2171	0.007854	22015011103437	0	0	0	0	0	0				6
2160	0.005724	22015011103427	13	13	0	8	0	8				6
2156	0.003899	22015011103424	1	1	0	1	0	1				6
2155	0.005236	22015011103423	20	16	4	10	3	13				6
2158	0.003981	22015011103425	20	20	0	10	0	10				6
2162	0.005973	22015011103428	8	8	0	6	0	6				6
2174	0.011847	22015011103442	5	5	0	2	0	2				6
2192	0.01084	22015011103511	0	0	0	0	0	0				6
2280	0.000729	22015011103515A	0	0	0	0	0	0				6
	CUT TOTALS:		925	511	98	573	58	641				
	AFTER CUT:		1122	355	750	264	482	760	67.74%	31.64%	66.84%	

PRECINCT 2-5, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
25	0.835866	2-5	1760	798	909	647	582	1266	71.93	45.23	51.65

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	COOPER
696	0.028928	220150102 318		0	0	0	0	0	2
739	0.046331	220150103 201		0	0	0	0	0	2
748	0.004871	220150102 317		15	11	4	9	2	11	2
751	0.00322	220150102 307		0	0	0	0	0	0	2
752	0.004227	220150102 306		18	9	8	9	8	18	2
757	0.006703	220150102 208		17	2	15	2	7	9	2
773	0.052368	220150103 105		232	5	224	5	163	170	2
756	0.003843	220150102 320		5	5	0	4	0	4	2
701	0.004629	220150102 315		46	15	29	13	17	32	2
702	0.002536	220150102 310		7	0	7	0	6	6	2
703	0.002887	220150102 309		22	12	10	10	5	15	2
749	0.003261	220150102 308		8	0	8	0	7	7	2
699	0.004589	220150102 314		15	3	8	3	6	13	2
705	0.003178	220150102 304		0	0	0	0	0	0	2
750	0.00308	220150102 305		0	0	0	0	0	0	2
747	0.004207	220150102 316		25	12	13	8	7	15	2
770	0.018178	220150102 206		85	21	61	20	27	48	2
774	0.002133	220150103 121		58	0	58	0	41	41	2
776	0.018859	220150103 115		82	3	79	1	64	65	2
777	0.020691	220150102 101		0	0	0	0	0	0	2
778	0.058951	220150103 116		11	0	11	0	9	9	2
786	0.017974	220150102 123		0	0	0	0	0	0	2
741	0.030291	220150102 103		0	0	0	0	0	0	2
742	0.00799	220150102 105		0	0	0	0	0	0	2
746	0.011231	220150102 104		0	0	0	0	0	0	2
767	0.005314	220150102 109		20	11	7	11	4	15	2

768	0.004026	220150102 113		0	0	0	0	0	0				2
769	0.005233	220150102 120		15	15	0	13	0	13				2
775	0.015835	220150102 102		39	28	5	27	5	35				2
754	0.00322	220150102 116		0	0	0	0	0	0				2
761	0.005092	220150102 107		46	24	21	16	14	31				2
763	0.003542	220150102 115		7	3	4	3	1	4				2
764	0.004227	220150102 118		10	4	6	3	3	6				2
765	0.003542	220150102 114		6	6	0	6	0	6				2
755	0.004026	220150102 117		4	4	0	4	0	4				2
753	0.004207	220150102 108		22	9	13	9	7	16				2
788	0.004428	220150102 119		22	10	12	7	4	11				2
762	0.004871	220150102 106		25	3	22	3	8	11				2
782	0.005092	220150102 110		17	16	0	14	0	15				2
783	0.003703	220150102 112		9	3	6	3	4	7				2
784	0.005334	220150102 121		20	20	0	18	0	18				2
785	0.001771	220150102 111		0	0	0	0	0	0				2
780	0.002618	220150103 119		25	0	25	0	22	22				2
781	0.010387	220150103 110		66	0	66	0	43	43				2
889	0.002093	220150102 125		0	0	0	0	0	0				2
791	0.004348	220150102 124		0	0	0	0	0	0				2
779	0.001789	220150103 120		17	1	16	1	12	13				2
793	0.005998	220150102 201		26	15	5	9	1	12				2
	CUT TOTALS:			1042	270	743	231	497	745				
	AFTER CUT:			718	526	166	416	65	521	72.56%	73.26%	23.12%	

PRECINCT 2-6, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
26	2.088813	2-6	1684	1095	512	862	264	1196	71.14	65.02	30.40

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	COOPER
656	0.009682	220150104 122		47	27	17	22	8	33	2
658	0.009089	220150104 310		0	0	0	0	0	0	2
662	0.008503	220150104 208		73	28	45	23	20	43	2
672	0.014068	220150104 206		16	8	8	8	3	12	2
675	0.007084	220150104 125		20	20	0	15	0	15	2
676	0.007125	220150104 201		43	20	20	15	14	30	2
677	0.007567	220150104 203		50	35	15	31	11	42	2
684	0.016174	220150103 202A		0	0	0	0	0	0	2
709	0.033054	220150104 110		127	45	78	38	45	87	2
663	0.005485	220150104 209		10	1	0	1	0	5	2
667	0.004629	220150104 303		14	13	0	12	0	13	2
668	0.004971	220150104 210		2	2	0	2	0	2	2
669	0.008036	220150104 215		30	4	26	2	10	12	2
670	0.004448	220150104 216		21	11	10	6	9	15	2
697	0.001055	220150104 214		0	0	0	0	0	0	2
659	0.010311	220150104 309		16	13	3	11	3	14	2
664	0.002174	220150104 307		0	0	0	0	0	0	2
665	0.002415	220150104 306		0	0	0	0	0	0	2
666	0.00828	220150104 304		24	7	15	7	8	17	2

678	0.004643	220150104	205	8	7	0	2	0	3				2
680	0.00483	220150104	211	10	7	1	4	1	7				2
685	0.004066	220150104	212	18	13	0	13	0	18				2
681	0.006334	220150104	213	21	19	0	18	0	19				2
679	0.001993	220150104	204	8	8	0	6	0	6				2
649	0.004589	220150104	315	23	18	5	18	3	21				2
652	0.00477	220150104	120	12	11	0	9	0	10				2
654	0.004347	220150104	121	9	9	0	8	0	8				2
661	0.007608	220150104	207	61	30	29	23	12	35				2
655	0.004108	220150104	123	25	22	0	17	0	20				2
671	0.005031	220150104	313	52	20	32	15	18	33				2
673	0.00483	220150104	124	49	8	41	6	14	20				2
674	0.00479	220150104	202	51	39	10	24	8	32				2
650	0.004528	220150104	314	24	16	6	11	3	15				2
645	0.003924	220150104	116	18	14	3	10	2	13				2
651	0.004442	220150104	119	29	19	10	17	4	21				2
641	0.003456	220150104	317	21	3	18	3	10	13				2
648	0.003945	220150104	316	18	18	0	17	0	17				2
647	0.003374	220150104	117	28	10	18	7	13	20				2
653	0.004347	220150104	118	11	3	8	3	6	9				2
706	0.008734	220150104	112	64	35	24	29	11	43				2
711	0.014832	220150104	107A	0	0	0	0	0	0				2
	CUT TOTALS:			1053	563	440	453	236	723				
	AFTER CUT:			631	532	72	409	48	475	75.28%	84.31%	11.41%	

PRECINCT 2-9, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
29	0.66	2 - 9	1928	1100	786	856	348	1232	63.9	57.05	40.77	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
626	0.038132	220150104 1998										1
627	0.129764	220150104 126		0	0	0	0	0				1
629	0.095888	220150105 301		16	15	0	12	0	13			1
722	0.003421	220150104 129		0	0	0	0	0	0			1
	CUT TOTALS:			16	15	0	12	0	13			
	AFTER CUT:			1912	1085	786	846	348	1219	63.76%	56.75%	41.11%

PRECINCT 2-9, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
29	0.66	2 - 9	1928	1100	786	856	348	1232	63.9	57.05	40.77	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
821	0.032216	220150106 209		84	84	0	52	0	52			1
834	0.010564	220150105 206		48	45	3	34	2	36			1
839	0.012194	220150105 303		20	20	0	14	0	14			1
836	0.011611	220150105 307		44	36	2	32	1	37			1
820	0.023985	220150105 201		110	110	0	82	0	82			1
831	0.008747	220150105 202		47	46	0	39	0	40			1

832	0.01156	220150105	204	45	45	0	45	0	45				1
835	0.011148	220150105	207	51	51	0	39	0	39				1
830	0.008049	220150105	203	40	33	7	29	2	31				1
533	0.008137	220150105	208	44	39	0	30	0	33				1
	CUT TOTALS:			533	508	12	406	5	419				
	AFTER CUT:			1395	591	774	452	343	813	58.28%	42.37%	55.48%	

PRECINCT 2-11, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
211	0.8388	2-11	2007	1626	301	1266	181	1528	76.03	81.02	15.00	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
724	0.01678	220150105 302		28	27	0	21	0	22			2
858	0.017123	22015010802420		13	13	0	10	0	10			2
857	0.008218	22015010802409		11	11	0	8	0	8			2
852	0.003187	22015010802407		14	7	6	6	4	11			2
862	0.025438	22015010802508		0	0	0	0	0	0			2
864	0.007306	22015010802507		1	1	0	1	0	1			2
863	0.005815	22015010802508		59	15	41	11	28	42			2
860	0.008875	22015010802508		50	13	36	13	20	34			2
864	0.007862	22015010802510		10	0	10	0	5	5			2
	CUT TOTALS:			186	87	93	70	57	133			
	AFTER CUT:			1821	1539	208	1216	124	1393	76.50%	84.51%	11.42%

PRECINCT 2-13, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
213	0.512203	2-13	1427	1128	253	856	113	986	70.01	79.05	17.73	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
910	0.007947	22015010801113		0	0	0	0	0	0			3
877	0.004106	22015010801201		0	0	0	0	0	0			3
879	0.01134	22015010801206		34	32	0	23	0	25			3
891	0.005383	22015010801209		30	25	4	19	2	22			3
894	0.012258	22015010801208		81	77	13	54	9	64			3
881	0.013428	22015010801207		59	56	3	44	2	46			3
880	0.004912	22015010801204		21	21	0	18	0	18			3
882	0.004972	22015010801203		23	23	0	16	0	16			3
883	0.005234	22015010801202		39	32	6	21	3	25			3
973	0.008582	22015010801121		38	31	7	23	4	27			3
972	0.010648	22015010801120		34	33	0	25	0	26			3
905	0.023772	22015010801108		124	106	18	85	10	95			3
907	0.013265	22015010801107		112	94	12	68	7	78			3
908	0.008798	22015010801106		69	56	11	43	4	48			3
913	0.014509	22015010801114		32	31	0	29	0	30			3
969	0.028262	22015010801115		100	97	0	71	0	73			3
970	0.005314	22015010801116		23	23	0	19	0	19			3
971	0.005326	22015010801119		17	17	0	16	0	16			3
974	0.005066	22015010801117		51	17	28	13	8	24			3

978	0.014171	22015010801205	58	47	7	38	2	43				3
975	0.00463	22015010801118	37	28	9	24	2	26				3
	CUT TOTALS:		992	846	118	647	53	722				
	AFTER CUT:		435	282	135	209	80	277	63.68%	64.83%	31.03%	

PRECINCT 2-14, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
214	0.514044	2-14	2122	1687	360	1276	185	1512	71.25	79.50	16.97	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
943	0.024396	22015010702609	130	117	2	87	2	93				3
957	0.034359	22015010702606	195	141	47	115	28	147				3
962	0.04633	22015010702607	211	171	35	133	14	152				3
964	0.050706	22015010702605	197	175	9	138	6	153				3
1011	0.012337	22015010702502	73	72	0	55	0	56				3
940	0.035025	22015010701408	292	178	94	143	56	213				3
995	0.008573	22015010702610	0	0	0	0	0	0				3
936	0.019364	22015010701407	130	110	18	80	7	89				3
	CUT TOTALS:		1228	984	205	751	113	903				
	AFTER CUT:		894	723	155	525	72	609	68.12%	80.87%	17.34%	

PRECINCT 2-14, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
214	0.514044	2-14	2122	1687	360	1276	185	1512	71.25	79.50	16.97	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1000	0.015803	22015010801214	73	65	6	49	3	54				5
1002	0.015239	22015010801215	91	89	0	63	0	64				5
998	0.021822	22015010801219	60	58	0	40	0	41				5
999	0.011788	22015010801298C										5
1004	0.017172	22015010801314B	0	0	0	0	0	0				5
1005	0.002763	22015010801396A										5
	CUT TOTALS:		224	213	6	152	3	159				
	AFTER CUT:		1898	1474	354	1124	182	1353	71.29%	77.66%	18.66%	

PRECINCT 2-15, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
215	12.4388	2-15	5440	3247	1832	2275	1191	3703	68.07	59.69	33.68	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1014	0.025808	22015010702501	58	37	21	28	8	36				3
	CUT TOTALS:		58	37	21	28	8	36				
	AFTER CUT:		5382	3210	1811	2247	1183	3667	68.13%	59.64%	33.65%	

PRECINCT 2-15, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
215	12.4388	2-15	5440	3247	1832	2275	1191	3703	68.07	59.69	33.68	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1017	0.009946	22015010702504	17	12	5	9	5	14				2
1182	0.005883	22015010702312	34	0	33	0	26	27				2
1181	0.005615	22015010702311	24	0	24	0	17	17				2
1186	0.010313	22015010702313	35	0	35	0	26	26				2
1187	0.0503	22015010702314	177	38	139	35	110	148				2
1198	0.004288	22015010702402	41	1	39	1	26	28				2
1189	0.010085	22015010702401	189	0	184	0	118	123				2
1201	0.005926	22015010702410	0	0	0	0	0	0				2
1200	0.010208	22015010702409	41	3	37	3	27	31				2
1192	0.011072	22015010702406	140	1	137	0	80	82				2
1197	0.010829	22015010702412	45	4	41	4	17	21				2
1023	0.014393	22015010801301A	0	0	0	0	0	0				2
1195	0.008717	22015010702408	89	9	80	6	28	34				2
1196	0.003322	22015010702411	6	0	6	0	2	2				2
1191	0.007951	22015010702407	34	1	33	1	21	22				2
1190	0.00459	22015010702506	8	0	8	0	4	4				2
1016	0.016386	22015010702505	78	0	78	0	54	54				2
1025	0.007267	22015010702507	40	7	33	7	22	29				2
1194	0.004711	22015010702404	43	0	43	0	27	27				2
1199	0.006522	22015010702405	44	0	44	0	30	30				2
1193	0.003281	22015010702403	25	0	25	0	17	17				2
	CUT TOTALS:		1068	76	1002	68	857	736				
	AFTER CUT:		4352	3171	830	2206	534	2967	68.18%	72.86%	19.07%	

PRECINCT 2-15, CUT 3

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
215	12.4388	2-15	5440	3247	1832	2275	1191	3703	68.07	59.69	33.68	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1022	0.020585	22015010801302	45	43	1	34	1	36				5
1027	0.087934	22015010801314C	230	208	9	154	6	171				5
1202	0.005375	22015010801310B	1	1	0	1	0	1				5
1206	0.002456	22015010801301B	0	0	0	0	0	0				5
1020	0.015259	22015010801304	75	54	18	42	8	53				5
1024	0.011567	22015010801303	93	80	9	58	3	64				5
1021	0.011996	22015010801308	53	50	3	34	2	38				5
1019	0.017393	22015010801305	112	84	18	64	8	79				5
1026	0.008052	22015010801309	42	42	0	31	0	31				5
1006	0.013648	22015010801306	59	58	0	50	0	51				5
1007	0.011475	22015010801307	66	60	0	48	0	52				5
	CUT TOTALS:		776	678	58	517	28	574				
	AFTER CUT:		4664	2569	1774	1758	1163	3129	67.09%	55.08%	38.04%	

PRECINCT 2-16, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
216	0.607974	2-16	2012	1741	157	1319	96	1491	74.11	88.53	7.90	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1125	0.025876	22015010702602		95	85	0	59	0	67			3
1015	0.01399	22015010702604		111	82	14	67	5	78			3
1013	0.00469	22015010702605		78	59	15	41	6	48			3
1178	0.017429	22015010702603		52	51	0	41	0	42			3
1127	0.013969	22015010702601		48	45	2	31	1	33			3
	CUT TOTALS:			384	332	31	239	12	267			
	AFTER CUT:			1628	1409	126	1080	74	1224	75.18%	86.55%	7.74%

PRECINCT 2-17B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
2172	0.307589	2-17B	1607	1249	252	863	115	1047	65.15	77.72	15.68	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1092	0.010716	22015010801204		59	46	9	33	4	41			7
1083	0.008063	22015010801315		26	24	0	19	0	21			7
1096	0.015844	22015010801209		69	49	19	37	12	50			7
1103	0.005332	22015010801208		38	24	10	19	6	26			7
1095	0.012333	22015010801322		41	36	0	27	0	29			7
1104	0.004423	22015010801210		28	19	4	15	2	19			7
1141	0.02228	22015010801323		31	22	5	15	1	18			7
1143	0.003178	22015010801211		18	11	3	9	1	13			7
1077	0.005039	22015010801313		40	36	3	21	2	24			7
1078	0.011246	22015010801314		79	55	9	36	4	50			7
1089	0.008863	22015010801203		24	20	3	17	2	20			7
1090	0.011289	22015010801202		82	64	18	41	8	49			7
1091	0.005885	22015010801201		38	30	8	20	4	24			7
1100	0.007002	22015010801206		47	38	9	27	5	32			7
1102	0.00563	22015010801207		49	41	8	27	4	31			7
1099	0.00489	22015010801205		48	32	12	22	5	26			7
	CUT TOTALS:			715	547	120	385	60	476			
	AFTER CUT:			892	702	132	478	55	571	84.01%	78.70%	14.80%

PRECINCT 2-18A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
2181	41.15539	2-18A	746	389	336	293	242	545	73.46	52.14	45.31	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1937	5.623765	220150112 512A		88	82	6	64	5	69			6
2083	0.148908	220150112 524		0	0	0	0	0	0			6
2084	0.095398	220150112 525		0	0	0	0	0	0			6
2087	0.039057	220150112 526		0	0	0	0	0	0			6
2084	0.700701	220150112 598E										6
2085	0.072243	220150112 554		0	0	0	0	0	0			6
2115	0.269583	220150112 555		0	0	0	0	0	0			6

2116	0.067848	220150112 556		0	0	0	0	0	0			6
1836	6.704751	220150112 505A		86	79	0	54	0	57			6
2059	0.150677	220150112 514		0	0	0	0	0	0			6
2088	0.117331	220150112 598B										6
2111	0.012202	220150112 519		0	0	0	0	0	0			6
2068	0.019881	220150112 513		7	7	0	5	0	5			6
2086	0.318647	220150112 546		0	0	0	0	0	0			6
2071	0.149772	220150112 547		0	0	0	0	0	0			6
2105	0.071077	220150112 548		0	0	0	0	0	0			6
2073	0.136971	220150112 550		0	0	0	0	0	0			6
2104	0.033748	220150112 549		0	0	0	0	0	0			6
2103	0.094972	220150112 599D										6
2070	0.482625	2201501110340668		11	6	5	4	4	8			6
2102	0.853015	220150112 528		17	15	2	11	2	13			6
2261	0.338417	220150112 529		27	22	3	19	3	24			6
2264	0.007098	220150112 531		0	0	0	0	0	0			6
2098	0.020598	220150112 545		5	3	2	3	2	5			6
	CUT TOTALS:			241	214	18	160	16	181			
	AFTER CUT:			505	175	320	133	226	367	72.67%	34.65%	63.37%

PRECINCT 2-21A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
2211	9.189616	2-21A	550	496	44	373	36	414	75.27	90.18	8.00	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
420	0.126135	22015011103635		2	2	0	2	0	2			6
421	0.112629	22015011103634		39	38	1	38	1	39			6
406	0.543158	22015011103627		18	16	2	13	2	15			6
404	0.147136	22015011103625		80	78	0	54	0	54			6
401	0.111537	22015011103608		0	0	0	0	0	0			6
402	1.04985	22015011103629		0	0	0	0	0	0			6
403	0.149577	22015011103630		0	0	0	0	0	0			6
	CUT TOTALS:			139	134	3	107	3	110			
	AFTER CUT:			411	362	41	266	33	304	73.97%	88.08%	9.98%

PRECINCT 2-21B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
2212	19.14651	2-21B	295	290	0	195	0	200	67.80	98.31	0.00	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
2382	0.01324	2201501110399L										7
	CUT TOTALS:			0	0	0	0	0	0			
	AFTER CUT:			295	290	0	195	0	200	67.80%	98.31%	0.00%

PRECINCT 3-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
31	1.595311	3- 1	1074	711	354	553	231	787	73.28	66.20	32.96	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1787	0.120981	220150112 328A	62	46	13	36	10	48				8
1805	0.133118	220150112 357A	56	22	33	17	17	34				8
1808	0.041454	220150112 361A	51	0	51	0	31	31				8
1811	0.020084	220150112 369	31	5	26	3	17	20				8
1813	0.005875	220150112 371A	29	0	29	0	21	21				8
1840	0.008195	220150112 360A	0	0	0	0	0	0				8
1863	0.020302	220150112 375A	0	0	0	0	0	0				8
1815	0.005836	220150112 372	14	0	14	0	6	6				5
1797	0.010732	220150112 351	0	0	0	0	0	0				8
1800	0.009516	220150112 352	0	0	0	0	0	0				8
1802	0.031359	220150112 362	100	47	53	44	51	95				8
1806	0.005549	220150112 363	11	2	9	2	5	7				8
1807	0.00341	220150112 350	0	0	0	0	0	0				8
1812	0.008272	220150112 370	38	0	38	0	22	22				8
1795	0.007525	220150112 349	0	0	0	0	0	0				8
1796	0.002797	220150112 348	4	4	0	3	0	3				8
1799	0.008884	220150112 358	17	5	12	5	9	14				8
1801	0.004336	220150112 356	9	1	8	1	5	6				8
1803	0.003547	220150112 359	18	0	18	0	10	10				8
1804	0.004943	220150112 357	8	0	8	0	8	8				8
1790	0.002543	220150112 353	0	0	0	0	0	0				8
1791	0.004582	220150112 354	1	1	0	1	0	1				8
1792	0.004178	220150112 330	2	2	0	2	0	2				8
1793	0.005221	220150112 329	3	3	0	3	0	3				8
	CUT TOTALS:		451	141	310	119	210	329				
	AFTER CUT:		623	570	44	434	21	458	73.52%	91.49%	7.06%	

PRECINCT 3-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
32	86.75123	3- 2	1217	655	548	489	358	867	71.24	53.82	45.03	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
42	1.394835	220150112 109	3	3	0	2	0	2				9
45	1.789421	220150112 112	7	7	0	7	0	7				9
52	2.773778	220150112 111	25	23	2	20	2	22				9
1678	4.452686	220150112 135	82	10	72	7	45	52				9
1680	0.178456	220150112 136	0	0	0	0	0	0				9
1681	0.877794	220150112 229	53	17	36	13	22	35				9
1684	0.14487	220150112 231	3	3	0	2	0	2				9
1699	1.518446	220150112 134	13	4	9	2	3	5				9
1706	1.216806	220150112 145	3	3	0	3	0	3				9
1716	0.860216	220150112 146	0	0	0	0	0	0				9
1724	1.992454	220150112 156	9	4	5	4	2	6				9
1736	0.88084	220150112 155	14	0	14	0	12	12				9

1705	0.725465	220150112 277	41	37	0	30	0	32				9
1707	1.035041	220150112 143	36	2	34	2	22	24				9
1737	0.58794	220150112 301	18	18	0	11	0	11				9
1742	1.11838	220150112 302B	75	52	23	42	15	57				9
46	0.041308	220150112 303B	8	8	0	5	0	5				9
1843	0.025524	220150112 304B	0	0	0	0	0	0				9
1731	0.007821	220150112 281	6	6	0	6	0	6				9
1738	0.01477	220150112 381	0	0	0	0	0	0				9
1735	0.001812	220150112 380	0	0	0	0	0	0				9
1852	0.005636	220150112 279	0	0	0	0	0	0				9
1850	0.001342	220150112 144	2	0	0	0	0	2				9
1857	0.003701	220150112 230	0	0	0	0	0	0				9
1858	0.118812	220150112 138	2	0	2	0	2	2				9
1696	0.778134	220150112 141	10	4	6	2	6	8				9
1683	0.207818	220150112 139	0	0	0	0	0	0				9
1851	0.007886	220150112 140	0	0	0	0	0	0				9
1697	0.029336	220150112 142	0	0	0	0	0	0				9
35	1.298911	220150112 202	7	7	0	6	0	6				9
58	0.483774	220150112 228	8	8	0	7	0	7				9
56	2.170821	220150112 227	41	41	0	31	0	31				9
1683	0.026008	220150112 233	3	3	0	3	0	3				9
1685	0.07866	220150112 232	0	0	0	0	0	0				9
38	0.063093	220150112 225	0	0	0	0	0	0				9
39	0.482583	220150112 226	18	18	0	14	0	14				9
40	0.080292	220150112 201	0	0	0	0	0	0				9
53	0.101082	220150112 110	0	0	0	0	0	0				9
48	0.094884	220150112 114	0	0	0	0	0	0				9
1709	0.782968	220150112 149	0	0	0	0	0	0				9
1719	1.956456	220150112 153	21	21	0	13	0	13				9
1729	0.087552	220150112 147	0	0	0	0	0	0				9
1841	0.012211	220150112 188A										9
1717	0.112131	220150112 148	0	0	0	0	0	0				9
1725	0.008484	220150112 154	0	0	0	0	0	0				9
51	0.100321	220150112 113	1	1	0	1	0	1				9
1690	0.008838	220150112 239	0	0	0	0	0	0				9
	CUT TOTALS:		509	300	203	233	131	368				
	AFTER CUT:		708	355	345	266	228	490	70.48%	50.14%	48.73%	

PRECINCT 3-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
34	60.90977	3- 4	2068	700	1362	520	818	1359	65.09	33.52	65.23	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1939	0.927628	220150112 511A	4	4	0	4	0	4				6
2113	0.168563	220150112 599K										6
1951	0.104732	220150112 599L										6
2114	0.005531	220150112 558										6
	CUT TOTALS:		0	0	0	0	0	0				
	AFTER CUT:		4	4	0	4	0	4				
			2064	696	1362	516	818	1355	65.02%	33.40%	65.36%	

PRECINCT 4-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
41	105.6035	4-1	965	636	326	469	210	680	70.47	66.11	33.78	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1176	4.072834	22015011103118	3	3	0	3	0	3				0
2026	3.100187	220150112 602	28	26	2	22	2	24				0
2030	5.647052	220150112 601	31	28	3	20	3	23				0
2035	0.616186	22015011103110	4	4	0	4	0	4				0
2038	2.897549	22015011103108	23	23	0	17	0	17				0
2041	2.83552	22015011103115	13	11	2	8	2	10				0
2043	0.116188	22015011103116	0	0	0	0	0	0				0
2044	3.805841	22015011103114	0	0	0	0	0	0				0
2047	0.094257	22015011103111	10	4	6	3	4	7				0
2049	0.190894	22015011103199										0
1966	0.563072	220150112 608	17	17	0	14	0	14				0
1968	0.856308	220150112 609	7	3	4	2	2	4				0
1974	1.523927	220150112 613	32	32	0	23	0	23				0
2434	0.010396	220150112 699										0
2046	0.346455	220150112 614	3	3	0	2	0	2				0
2295	5.033803	22015011103122	10	9	0	5	0	6				0
2045	5.020436	22015011103113	2	0	2	0	2	2				0
2289	3.351628	22015011103134	0	0	0	0	0	0				0
2290	0.056824	22015011103132	0	0	0	0	0	0				0
2293	2.280231	220150111031278	41	39	2	25	2	27				0
2294	0.784213	22015011103130	1	1	0	1	0	1				0
2307	0.009684	22015011103139	0	0	0	0	0	0				0
2317	0.014332	22015011103140	0	0	0	0	0	0				0
71	1.009174	22015011103112	11	11	0	6	0	6				0
2318	0.01536	22015011103141	0	0	0	0	0	0				0
2319	0.00292	22015011103131	0	0	0	0	0	0				0
2320	0.008079	22015011103133	0	0	0	0	0	0				0
2324	0.003463	22015011103123	4	4	0	3	0	3				0
2054	0.702509	22015011103119	0	0	0	0	0	0				0
2027	0.052079	220150112 603	0	0	0	0	0	0				0
2032	4.904483	22015011103104	38	37	1	25	1	26				0
2036	0.068225	22015011103106	13	13	0	9	0	9				0
2037	0.075838	22015011103107	0	0	0	0	0	0				0
2039	0.176313	22015011103109	13	13	0	10	0	10				0
2033	0.008141	22015011103105	0	0	0	0	0	0				0
2051	2.801203	22015011103103	16	16	0	15	0	15				0
2040	0.096906	22015011103117	14	14	0	12	0	12				0
2052	0.882533	22015011103101	0	0	0	0	0	0				0
2053	0.021179	22015011103102	0	0	0	0	0	0				0
	CUT TOTALS:		334	311	22	229	16	248				
	AFTER CUT:		631	327	304	240	192	432	68.46%	51.82%	48.18%	

PRECINCT 4-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
42	35.32883	4-2	1012	666	112	631	72	713	70.45	67.55	11.07	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1848	0.442341	220150111033998R										8
1849	2.221368	22015011103299G										8
2130	2.591374	22015011103204	185	172	9	116	4	124				8
2134	0.126324	22015011103302	46	23	23	22	15	36				8
2162	0.883515	22015011103207	124	124	0	98	0	98				8
2208	1.332928	22015011103214	95	94	1	72	1	73				8
2165	0.019856	22015011103205	0	0	0	0	0	0				8
2131	0.586313	22015011103301	71	56	10	44	5	51				8
2278	0.035189	22015011103299J										8
2199	0.024636	22015011103210	9	9	0	6	0	6				8
2207	0.081587	22015011103212	4	4	0	2	0	2				8
2194	0.03974	22015011103209	19	14	0	10	0	12				8
	CUT TOTALS:		555	499	43	368	25	402				
	AFTER CUT:		457	367	69	263	47	311	68.05%	84.68%	15.10%	

PRECINCT 4-2, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
42	35.32883	4-2	1012	666	112	631	72	713	70.45	67.55	11.07	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
508	0.909706	22015011103211D	0	0	0	0	0	0				8
	CUT TOTALS:		0	0	0	0	0	0				
	AFTER CUT:		1012	666	112	631	72	713	70.45%	67.55%	11.07%	

PRECINCT 4-3A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
431	24.66573	4-3A	1432	806	602	567	378	961	67.11	56.42	42.04	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1491	10.26833	220150111037018	545	435	103	322	68	396				9
1490	0.821585	22015011105201	0	0	0	0	0	0				9
1492	0.370097	22015011105202	0	0	0	0	0	0				9
2304	0.512933	22015011103704	34	29	5	14	5	19				9
2299	0.754389	22015011103701C	13	8	5	6	4	10				9
2305	0.088326	22015011103702	0	0	0	0	0	0				9
2311	0.014533	22015011103799K										9
2315	0.087797	22015011103799L										9
2403	0.003105	22015011103799N										9
2312	0.007347	22015011103799M										9
	CUT TOTALS:		592	472	113	342	77	425				
	AFTER CUT:		840	336	489	225	301	536	63.81%	40.00%	58.21%	

PRECINCT 4-3A, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
431	24.66573	4- 3A	1432	808	602	567	378	961	67.11	56.42	42.04	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
543	0.002027	22015011103799A										6
CUT TOTALS:			0	0	0	0	0	0				
AFTER CUT:			1432	808	602	567	378	961	67.11%	56.42%	42.04%	

PRECINCT 4-3B CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
432	6.350989	4- 3B	1656	1332	304	1011	185	1208	73.01	80.43	18.36	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1478	0.141150	22015011105306	43	9	34	7	25	32				8
1477	0.074112	22015011105305	24	0	24	0	12	12				8
1464	0.002594	22015011105212	5	0	5	0	2	2				8
CUT TOTALS:			72	9	63	7	39	46				
AFTER CUT:			1584	1323	241	1004	146	1163	73.42%	83.52%	15.21%	

PRECINCT 4-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
44	12.66578	4- 4	4448	4032	326	2750	203	3020	67.90	90.65	7.33	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
552	1.350547	22015011105501	131	100	30	78	13	92				10
553	1.56105	22015011105502	715	613	58	395	60	466				10
1556	0.028813	22015011105515	30	24	5	17	4	22				10
556	0.017188	22015011105504	58	58	0	37	0	37				10
557	0.009942	22015011105505	55	55	0	37	0	37				10
559	0.010892	22015011105510	31	31	0	22	0	22				10
561	0.039795	22015011105509	88	63	0	53	0	56				10
1418	1.082466	22015011057098	245	207	34	154	23	181				10
560	0.014835	22015011105511	54	54	0	39	0	39				10
1416	0.032459	22015011105516	14	0	14	0	8	8				10
1427	0.007325	22015011105513	44	44	0	28	0	28				10
1426	0.001833	22015011105514	13	13	0	8	0	8				10
1425	0.022255	22015011105512	61	58	0	42	0	43				10
555	0.013474	22015011105503	62	61	0	36	0	37				10
563	0.015546	22015011105508	80	66	10	44	8	54				10
558	0.020641	22015011105506	71	71	0	50	0	50				10
562	0.013041	22015011105507	52	52	0	34	0	34				10
1474	0.145158	22015011105401	27	13	10	9	7	20				10
2407	0.004685	22015011057068	0	0	0	0	0	0				10
1428	0.471521	22015011057108	81	65	16	51	8	59				10
1429	0.003143	22015011105711	15	0	15	0	10	10				10
CUT TOTALS:			1927	1668	222	1134	139	1303				
AFTER CUT:			2521	2364	104	1616	64	1717	68.11%	93.77%	4.13%	

PRECINCT 4-8C CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
483	4.242834	4- 8C	118	109	2	69	2	74	62.71	92.37	1.69	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
1285	0.057871	220150108986199B										5
1288	0.293799	220150108986108E	0	0	0	0	0	0				5
1287	0.004995	220150108986199E										5
1245	0.375671	220150108986106F	0	0	0	0	0	0				5
1241	0.119184	220150108986199D										5
1248	0.048825	220150108986999C										5
1247	0.222693	220150108986901C	0	0	0	0	0	0				5
1251	0.144797	220150114969016	0	0	0	0	0	0				5
2412	0.015733	220150114969996										5
1037	0.053427	220150108986199C										5
1036	0.226891	220150108986104C	0	0	0	0	0	0				5
1033	0.085813	220150108013140	0	0	0	0	0	0				5
1028	0.037585	220150108013996										5
1034	0.002521	220150108013990										5
CUT TOTALS:			0	0	0	0	0	0				
AFTER CUT:			118	109	2	69	2	74	62.71%	92.37%	1.69%	

PRECINCT 4-10 CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
410	2.506967	4-10	4625	4005	360	2685	223	3071	66.40	86.59	8.22	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
153	0.13924	22015011098428A	163	156	2	105	1	109				12
2411	0.019489	22015011098429A	37	37	0	19	0	19				12
CUT TOTALS:			200	193	2	124	1	128				
AFTER CUT:			4425	3812	378	2561	222	2943	66.51%	86.15%	8.54%	

PRECINCT 4-11B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk	
4112	1.341755	4-11B	1325	1178	96	794	60	868	67.02	88.91	7.25	
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18				COOPER
549	0.52214	22015011103715A	514	430	54	314	40	365				10
CUT TOTALS:			514	430	54	314	40	365				
AFTER CUT:			811	748	32	480	20	523	64.49%	92.23%	3.95%	

COMPLAINANT'S EXHIBIT NO. 11

Breakdown by Mr. Gary Joiner of the Racial Composition of the Population in the Splits in the Precincts Found in the NAACP Plan Presented by Mr. George Price to the School Board as an Alternative to the Adoption of the Police Jury Plan

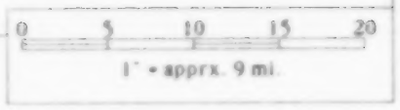
PRECINCT CUTS IN THE N.A.A.C.P. PLAN (SCHOOL BOARD DRAFT PLAN)

DETAILING POPULATION AND RACIAL CHARACTERISTICS

SOURCES: PLAN DEVELOPED BY N.A.A.C.P.
U.S. BUREAU CENSUS TIGER FILES
U.S. BUREAU OF THE CENSUS PL 94-171 DATA

Prepared by Gary D. Joiner
Precision Cartographics
P.O. Box 44144
Shreveport, LA 71104
February 14, 1995

PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



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PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

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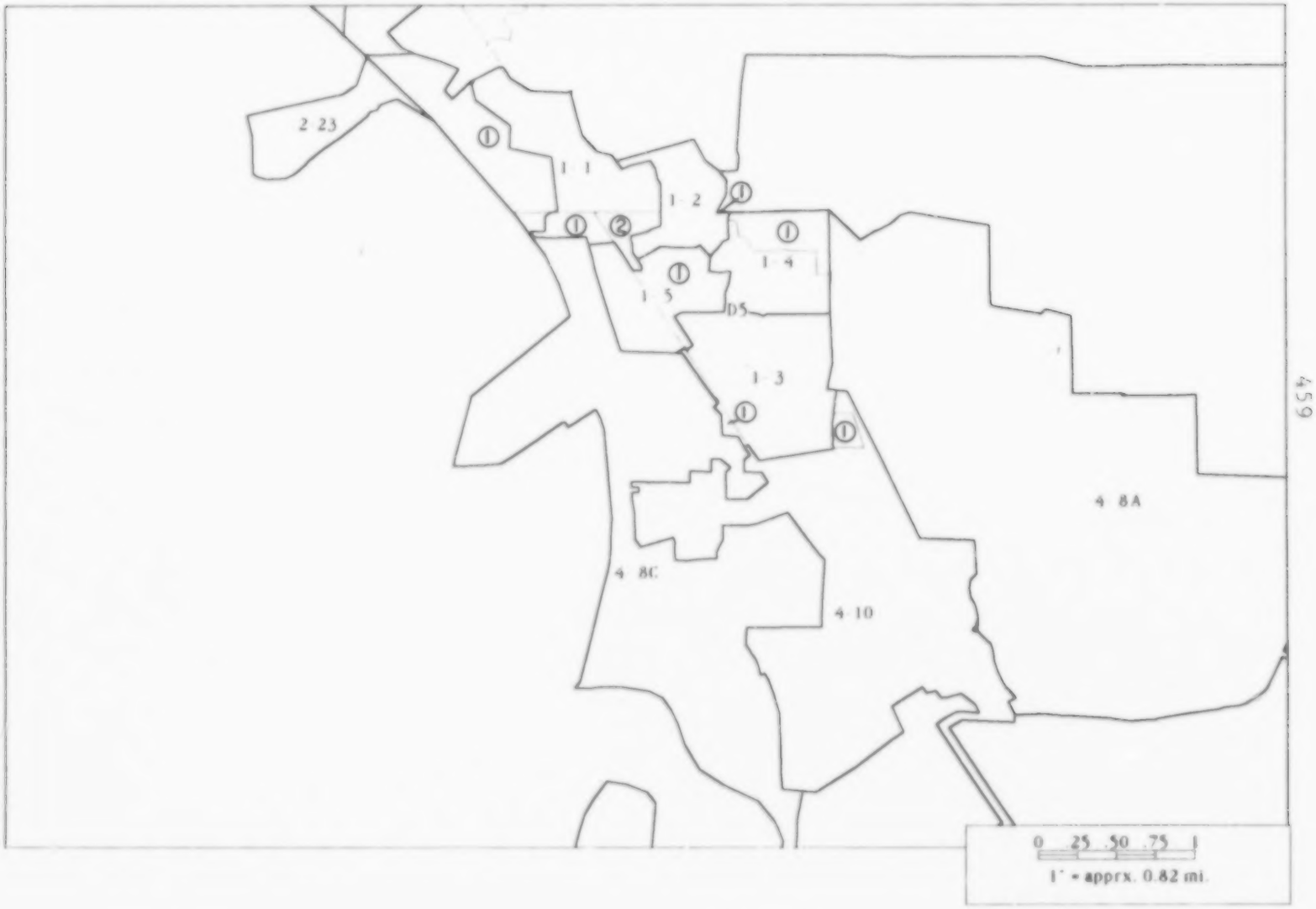
PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



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PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

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PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

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PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

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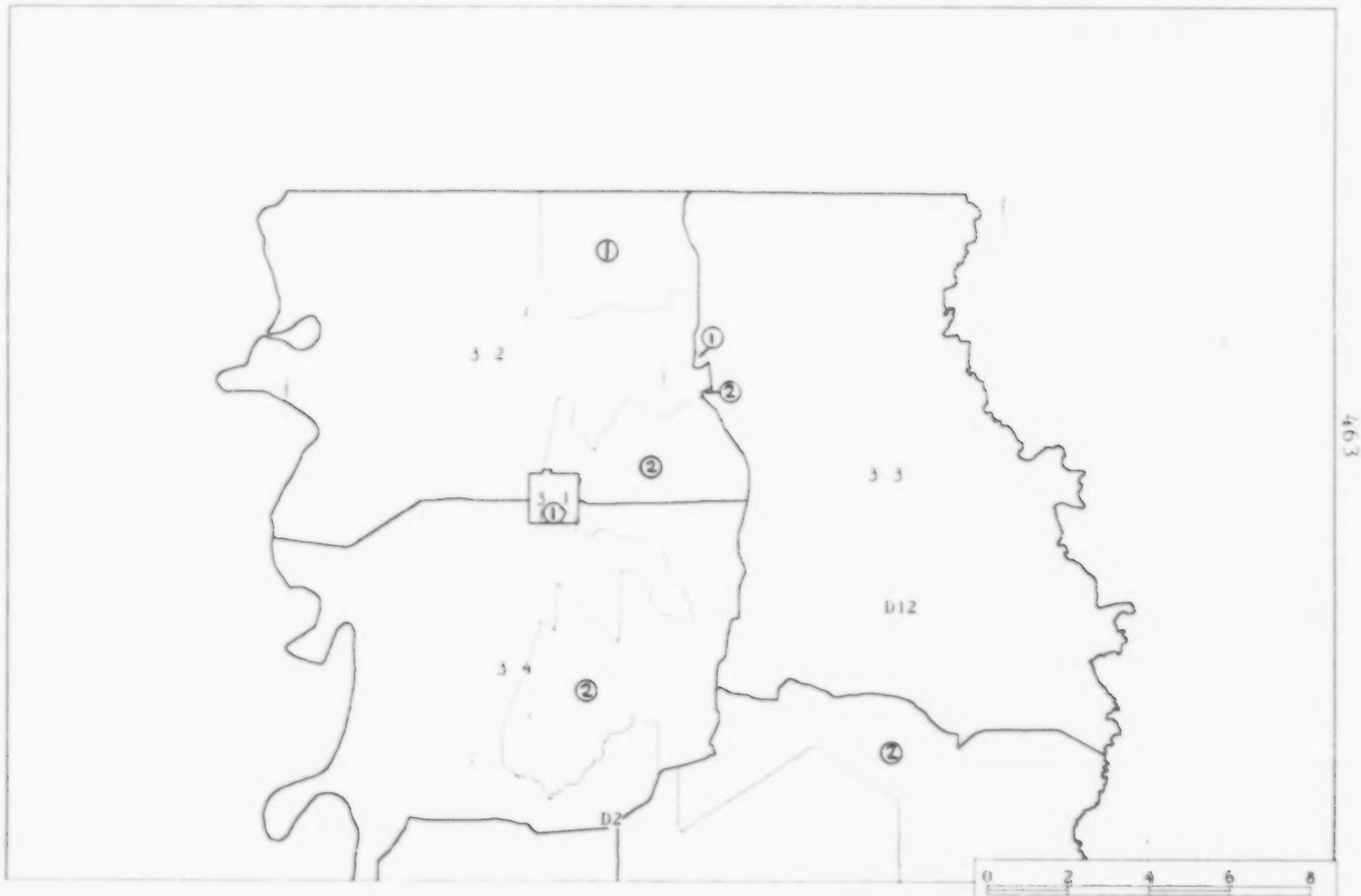
PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



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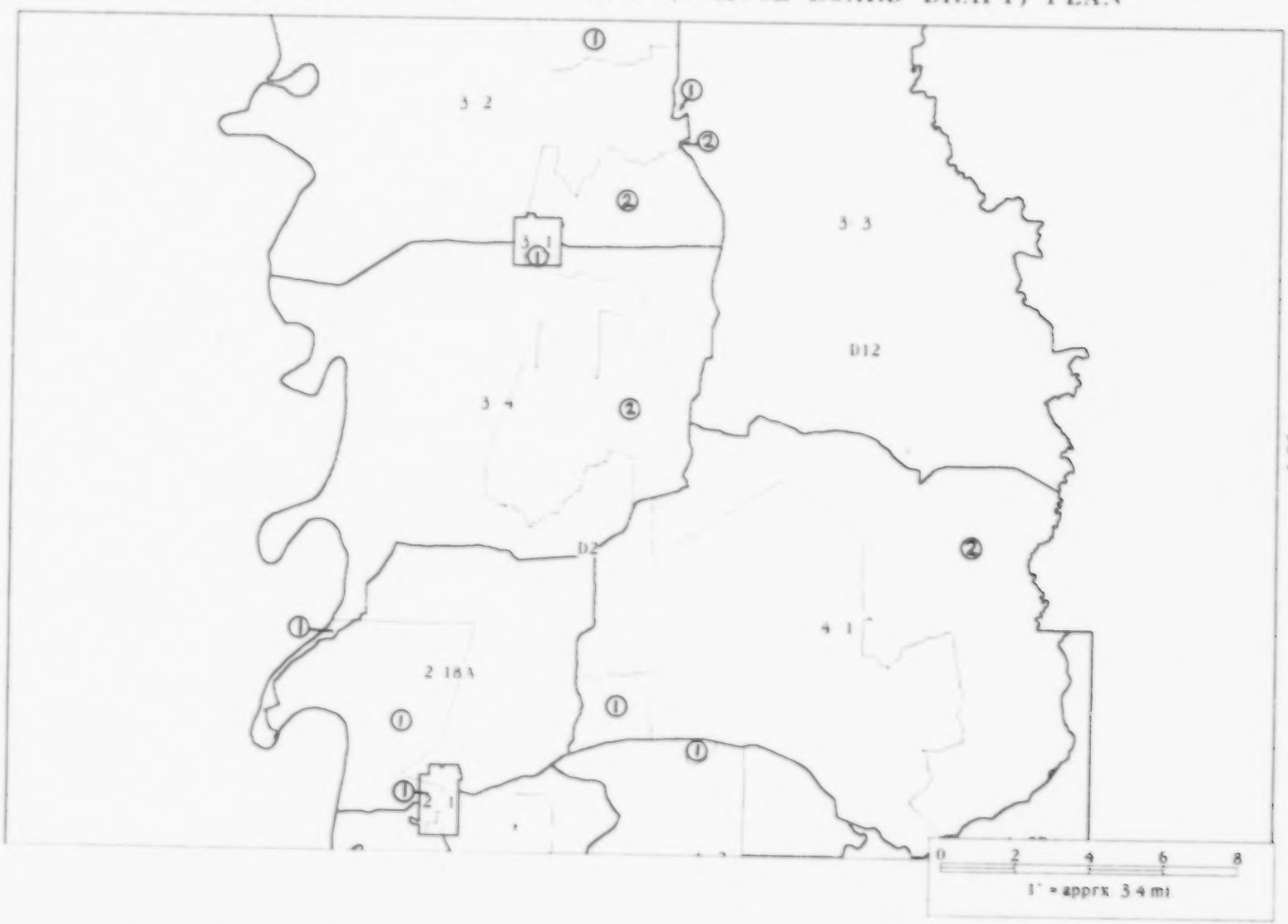
PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN



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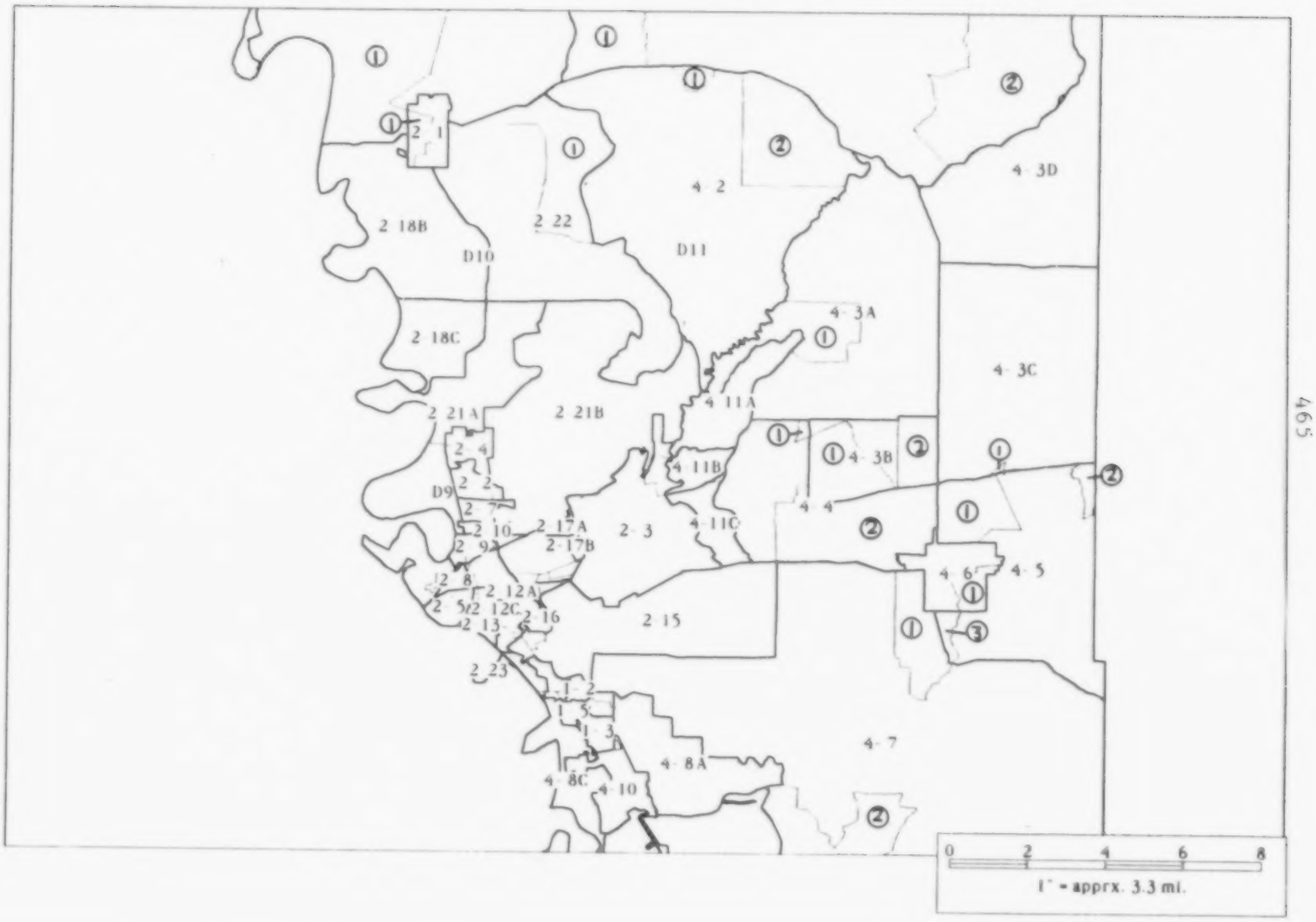

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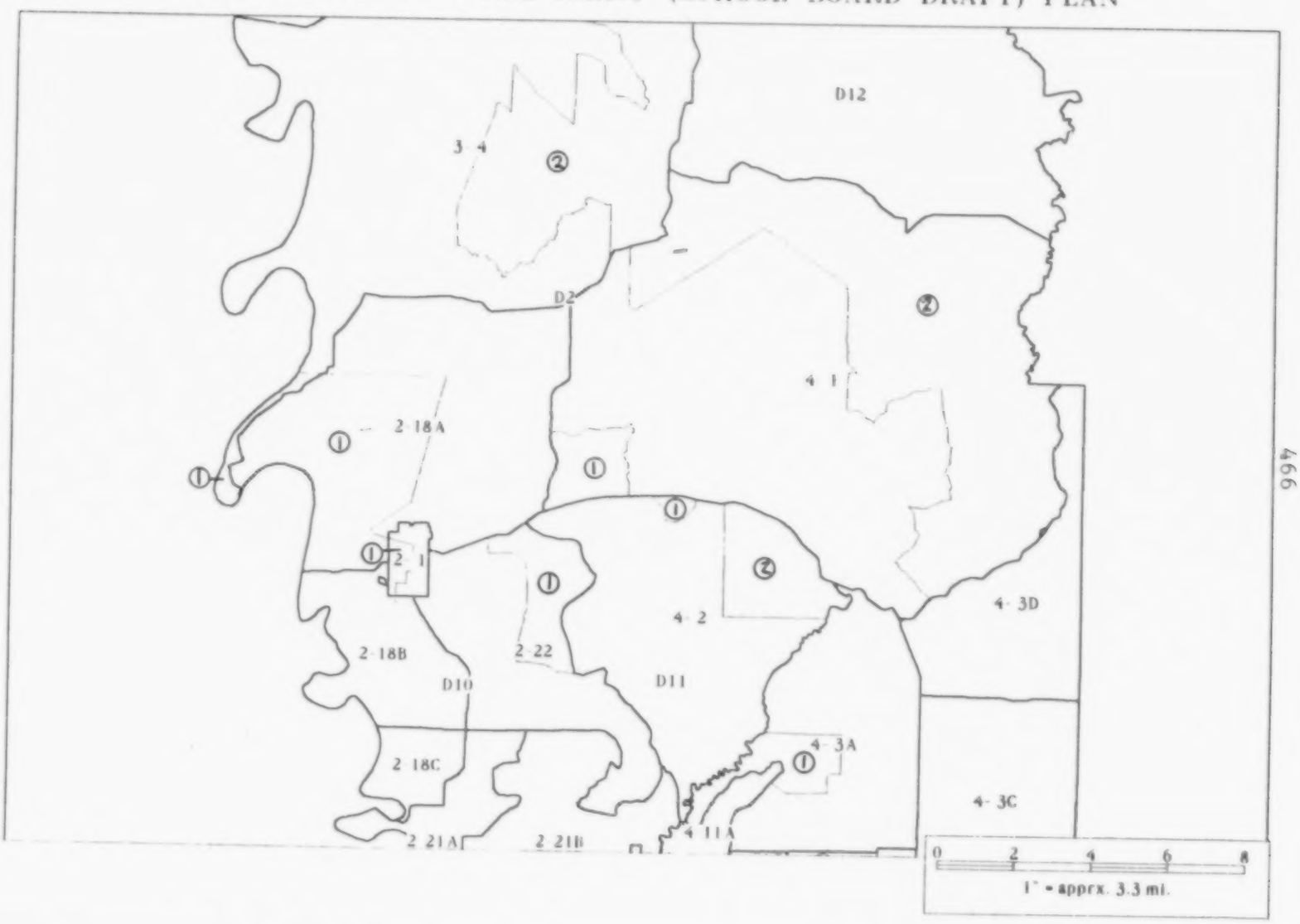

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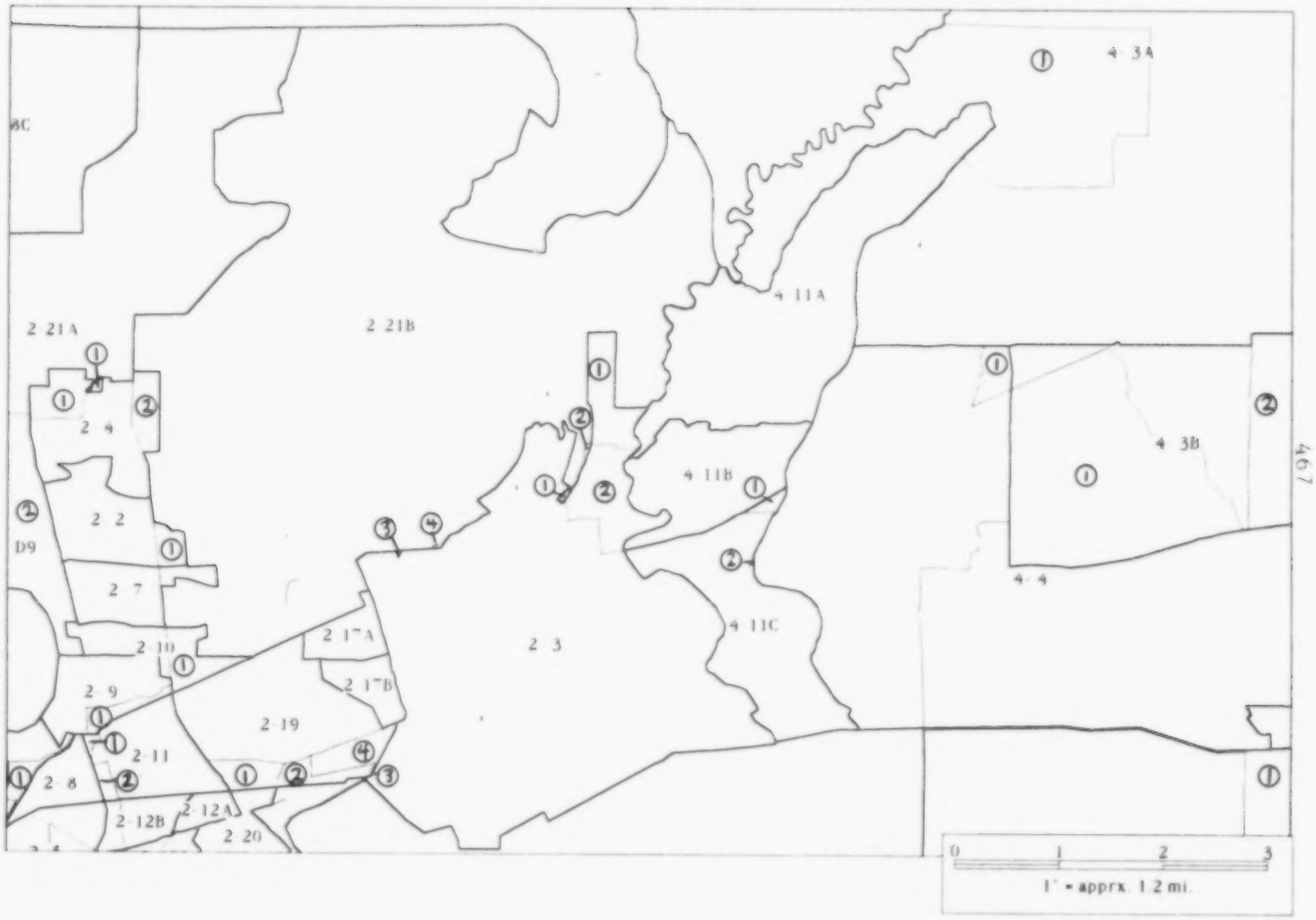

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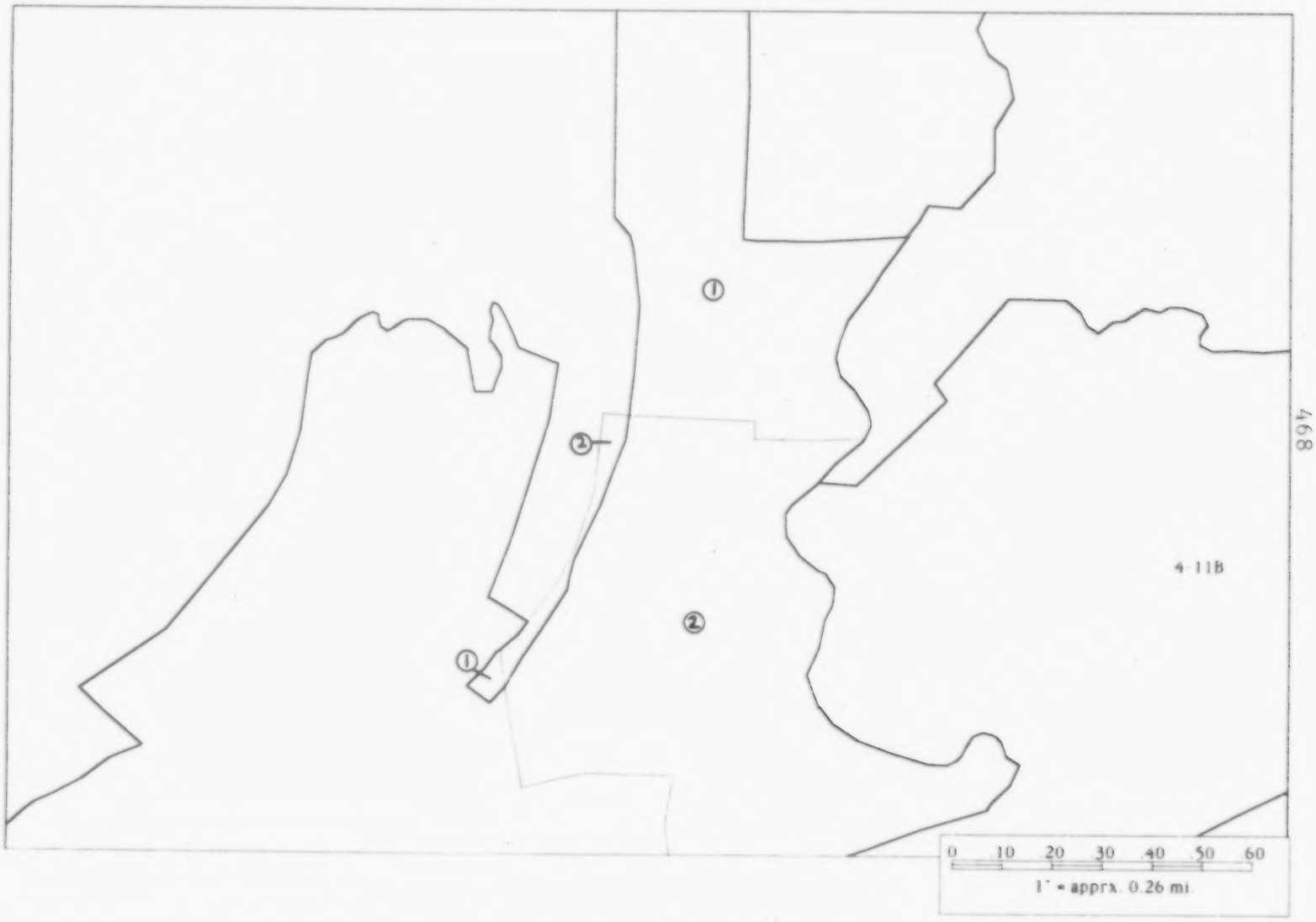

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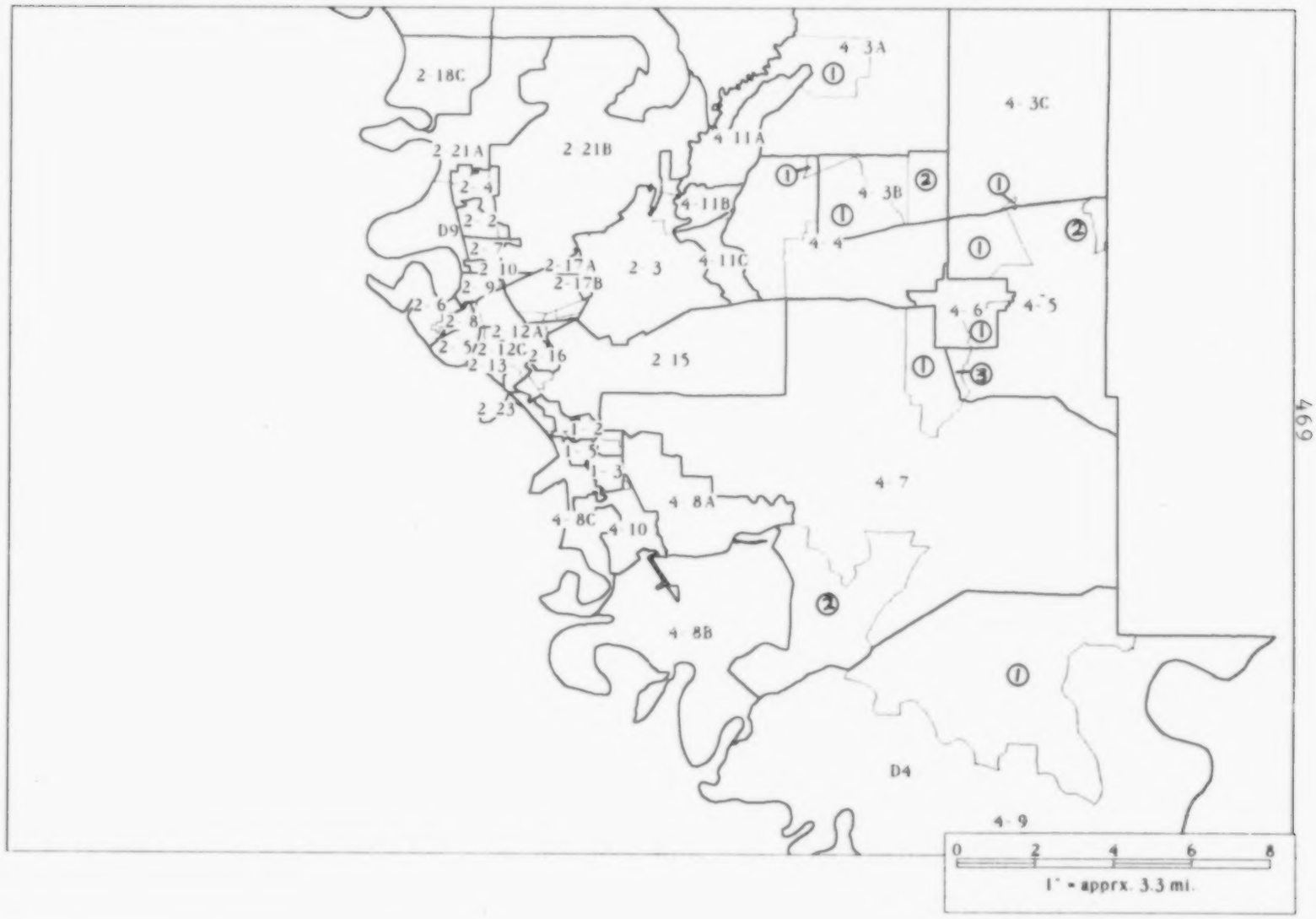

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PRECINCT CUTS IN THE NAACP (SCHOOL BOARD DRAFT) PLAN

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NAACP (SCHOOL BOARD DRAFT) PLAN PRECINCT CUTS DETAILING POPULATION AND RACIAL CHARACTERISTICS

PRECINCT 1-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
11	0 58192	1- 1	1939	1663	196	1278	131	1465	75 55	85 77	10 11
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1243	0 061015	220150108981048	0	0	0	0	0	0			
1242	0 003426	220150108981994									
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		1939	1663	196	1278	131	1465	75 55%	85 77%	10 11%

PRECINCT 1-1, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
11	0 58192	1- 1	1939	1663	196	1278	131	1465	75 55	85 77	10 11
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1255	0 042903	220150108982198	124	110	13	84	7	92			
1265	0 015928	220150108982188	0	0	0	0	0	0			
1263	0 00622	220150108982158	9	4	5	2	4	6			
1267	0 003135	220150108982148	0	0	0	0	0	0			
	CUT TOTALS:		133	114	18	86	11	98			
	AFTER CUT:		1806	1549	178	1192	120	1367	75 69%	85 77%	9 86%

PRECINCT 1-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
12	0 28474	1- 2	1985	1665	170	1227	114	1428	71 94	83 88	8 56
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1304	0 001101	220150109 901P	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		1985	1665	170	1227	114	1428	71 94%	83 88%	8 56%

PRECINCT 1-3, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
13	0 7005	1- 3	1966	1745	155	1312	90	1449	73 70	88 76	7 88
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1288	0 01596	220150108981060	0	0	0	0	0	0			
1348	0 010949	220150108981064	3	3	0	3	0	3			
	CUT TOTALS:		3	3	0	3	0	3			
	AFTER CUT:		1963	1742	155	1309	90	1446	73 66%	88 74%	7 90%

PRECINCT 1-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
14	0 416465	1- 4	1972	1727	135	1276	95	1450	73 53	87 58	6 85
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1305	0 097881	22015010898401B	241	210	19	159	12	182			
1308	0 018363	22015010898406	70	65	0	52	0	56			
1307	0 011613	22015010898407	53	42	3	28	3	36			
1325	0 01047	22015010898409	73	68	3	55	3	60			
1327	0 009423	22015010898410	83	75	6	54	5	61			
	CUT TOTALS:		520	460	31	348	23	395			
	AFTER CUT:		1452	1267	104	928	72	1055	72 66%	87 26%	7 16%

PRECINCT 1-5, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
15	0 39999	1- 5	1096	997	39	719	23	783	71 44	90 97	3 56
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1260	0 034419	22015010804408	74	65	6	43	4	49			
1266	0 008455	22015010898304	44	34	8	25	4	31			
1268	0 011659	22015010898305	75	71	4	42	2	44			
1269	0 009501	22015010898306	54	51	0	39	0	42			
1275	0 010632	22015010898308	57	49	0	41	0	46			
1273	0 009303	22015010898307	69	62	0	46	0	53			
1299	0 010471	22015010898309	42	39	2	28	2	31			
1276	0 015545	22015010804407	80	77	0	60	0	62			
1277	0 005437	22015010804406	53	49	3	32	2	35			
1278	0 020921	22015010804405	117	104	7	79	4	86			
1280	0 009021	22015010804413	59	50	0	39	0	43			
1279	0 008981	22015010804404	50	49	0	37	0	38			
1310	0 008658	22015010804403	64	58	6	40	3	43			
1311	0 006766	22015010804412	37	35	0	28	0	30			
1281	0 010028	22015010804414	54	50	3	39	2	42			
1312	0 006846	22015010804411	45	45	0	30	0	30			
1284	0 008688	22015010804415	80	71	0	47	0	50			
1314	0 005433	22015010804410	42	38	0	24	0	28			
	CUT TOTALS:		1096	997	39	719	23	783			
	AFTER CUT:		0	0	0	0	0	0	0 00%	0 00%	0 00%

PRECINCT 2-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
21	1 915979	2- 1	2047	1166	846	837	540	1401	68 44	56 96	41 33
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1880	0 166709	22015011103512A	129	125	0	81	0	85			
2180	0 011701	22015011103505	0	0	0	0	0	0			
2181	0 022085	22015011103504	67	59	0	40	0	43			
2185	0 007583	22015011103508	33	33	0	22	0	22			
2186	0 046338	22015011103509	68	46	22	37	15	52			
2188	0 005971	22015011103514	40	40	0	21	0	21			
2192	0 01094	22015011103511	0	0	0	0	0	0			
2150	0 188125	22015011103406A	114	98	16	66	7	73			
2154	0 020538	22015011103429	0	0	0	0	0	0			
2155	0 005236	22015011103423	20	16	4	10	3	13			
2159	0 012872	22015011103428	13	13	0	12	0	12			
2166	0 003972	22015011103435	8	8	0	6	0	6			
2167	0 013851	22015011103436	20	20	0	17	0	17			
2169	0 003143	22015011103434	2	2	0	2	0	2			
2170	0 00734	22015011103438	10	10	0	9	0	9			
2172	0 009325	22015011103439	1	1	0	1	0	1			
2176	0 038461	22015011103502	54	50	4	37	2	39			
2183	0 012359	22015011103506	56	52	4	42	2	44			
2179	0 009564	22015011103503	0	0	0	0	0	0			
2187	0 007363	22015011103513	47	33	12	25	4	30			
2175	0 00615	22015011103440	0	0	0	0	0	0			
2151	0 003875	22015011103431	12	8	4	4	4	8			
2152	0 004766	22015011103430	18	16	2	11	2	13			
2161	0 003007	22015011103432	5	5	0	3	0	3			
2164	0 003322	22015011103433	9	7	2	4	2	6			
2177	0 032501	22015011103501	50	44	4	35	2	37			
2173	0 008377	22015011103441	5	5	0	3	0	3			
2174	0 011847	22015011103442	5	5	0	2	0	2			
2171	0 007854	22015011103437	0	0	0	0	0	0			
2156	0 003699	22015011103424	1	1	0	1	0	1			
2160	0 005724	22015011103427	13	13	0	8	0	8			
2162	0 005973	22015011103426	8	8	0	6	0	6			
2158	0 003981	22015011103425	20	20	0	10	0	10			
	CUT TOTALS:		828	738	74	515	43	568			
	AFTER CUT:		1219	428	772	322	497	835	68 50%	35 11%	63 33%

PRECINCT 2-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
22	0 87896	2- 2	1124	1082	11	766	10	797	70 91	96 26	0 98
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
795	0 090331	22015011104305A	0	0	0	0	0	0			
796	0 007816	22015011104306	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		1124	1082	11	766	10	797	70 91%	96 26%	0 98%

PRECINCT 2-3, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
23	9 44398	2- 3	3774	3207	437	2237	271	2594	68 73	84 98	11 58
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
519	0 067024	22015011103633A	0	0	0	0	0	0			
520	0 037502	22015011103633B	0	0	0	0	0	0			
521	0 002911	22015011104501D	0	0	0	0	0	0			
522	0 003646	22015011104501B	0	0	0	0	0	0			
518	0 225184	22015011104501A	220	196	8	128	5	141			
531	0 008457	22015011104502	33	33	0	21	0	21			
532	0 005813	22015011104503	37	34	3	24	2	26			
	CUT TOTALS:		290	263	11	173	7	188			
	AFTER CUT:		3484	2944	426	2064	264	2406	69 06%	84 50%	12 23%

PRECINCT 2-3, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
23	9 44398	2- 3	3774	3207	437	2237	271	2594	68 73	84 98	11 58
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
534	0 00351	22015011104501C	0	0	0	0	0	0			
533	0 277089	22015011104505	0	0	0	0	0	0			
526	0 218513	22015011104504	58	56	0	39	0	40			
	CUT TOTALS:		58	56	0	39	0	40			
	AFTER CUT:		3716	3151	437	2198	271	2554	68 73%	84 80%	11 76%

PRECINCT 2-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
24	1 13475	2- 4	2446	2313	73	1572	44	1661	67 91	94 56	2 98
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
431	0 166757	22015011104103A	159	146	0	112	0	118			
429	0 029321	22015011104108	17	17	0	13	0	13			
432	0 00419	22015011104110	19	19	0	11	0	11			
433	0 004293	22015011104109	4	2	0	2	0	3			
434	0 018277	22015011104111	60	59	0	49	0	50			
	CUT TOTALS:		259	243	0	187	0	195			
	AFTER CUT:		2187	2070	73	1385	44	1466	67 03%	94 65%	3 34%

PRECINCT 2-4, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
24	1 13475	2- 4	2446	2313	73	1572	44	1661	67 91	94 56	2 98
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
474	0 157664	22015011104302A	34	34	0	22	0	22			
473	0 012376	22015011104304	18	12	4	10	2	14			
475	0 01324	22015011104303	0	0	0	0	0	0			
	CUT TOTALS:		52	46	4	32	2	36			
	AFTER CUT:		2394	2267	69	1540	42	1625	67 88%	94 70%	2 88%

PRECINCT 2-5, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
25	0 835996	2- 5	1760	796	909	647	582	1266	71 93	45 23	51 65
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
773	0 052368	220150103 105	232	5	224	5	163	170			
780	0 002818	220150103 119	25	0	25	0	22	22			
779	0 001769	220150103 120	17	1	16	1	12	13			
781	0 010387	220150103 110	66	0	66	0	43	43			
778	0 056951	220150103 116	11	0	11	0	9	9			
776	0 018859	220150103 115	82	3	79	1	64	65			
774	0 002133	220150103 121	58	0	58	0	41	41			
739	0 046331	220150103 201	0	0	0	0	0	0			
741	0 030291	220150102 103	0	0	0	0	0	0			
698	0 026928	220150102 318	0	0	0	0	0	0			
701	0 004629	220150102 315	46	15	29	13	17	32			
699	0 004589	220150102 314	15	3	8	3	6	13			
703	0 002697	220150102 309	22	12	10	10	5	15			

702	0 002536	220150102	310	7	0	7	0	6	6		
750	0 00308	220150102	305	0	0	0	0	0	0		
749	0 003261	220150102	308	8	0	8	0	7	7		
747	0 004207	220150102	316	25	12	13	8	7	15		
748	0 004871	220150102	317	15	11	4	9	2	11		
742	0 00799	220150102	105	0	0	0	0	0	0		
746	0 011231	220150102	104	0	0	0	0	0	0		
762	0 004871	220150102	108	25	3	22	3	8	11		
761	0 005092	220150102	107	46	24	21	16	14	31		
751	0 00322	220150102	307	0	0	0	0	0	0		
769	0 005233	220150102	120	15	15	0	13	0	13		
754	0 00322	220150102	116	0	0	0	0	0	0		
763	0 003542	220150102	115	7	3	4	3	1	4		
764	0 004227	220150102	118	10	4	6	3	3	6		
765	0 003542	220150102	114	6	6	0	6	0	6		
755	0 004026	220150102	117	4	4	0	4	0	4		
753	0 004207	220150102	106	22	9	13	9	7	16		
766	0 004428	220150102	119	22	10	12	7	4	11		
752	0 004227	220150102	306	18	9	8	9	8	18		
757	0 006703	220150102	208	17	2	15	2	7	9		
770	0 018176	220150102	206	85	21	61	20	27	48		
767	0 005314	220150102	109	20	11	7	11	4	15		
768	0 004026	220150102	113	0	0	0	0	0	0		
783	0 003703	220150102	112	9	3	6	3	4	7		
784	0 005334	220150102	121	20	20	0	18	0	18		
	CUT TOTALS:			955	206	733	177	491	679		
	AFTER CUT:			805	590	176	470	91	587	72 92%	73 29%	21 86%

PRECINCT 2-6, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
26	2 088613	2- 6	1684	1095	512	862	284	1198	71 14	65 02	30 40
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
684	0 016174	220150103 202A	0	0	0	0	0	0			
676	0 007125	220150104 201	43	20	20	15	14	30			
675	0 007064	220150104 125	20	20	0	15	0	15			
656	0 009882	220150104 122	47	27	17	22	8	33			
709	0 033054	220150104 110	127	45	78	38	45	87			
653	0 004347	220150104 118	11	3	8	3	6	9			
654	0 004347	220150104 121	9	9	0	8	0	8			
647	0 003374	220150104 117	26	10	18	7	13	20			

711	0 014832	220150104	107A	0	0	0	0	0	0				
674	0 00479	220150104	202	51	39	10	24	8	32				
673	0 00483	220150104	124	49	8	41	6	14	20				
671	0 005031	220150104	313	52	20	32	15	18	33				
672	0 014068	220150104	206	16	8	6	8	3	12				
661	0 007608	220150104	207	61	30	29	23	12	35				
662	0 008503	220150104	208	73	28	45	23	20	43				
	CUT TOTALS:			587	267	304	207	161	377				
	AFTER CUT:			1097	828	208	655	123	821	74 84%		75 48%	18 96%

PRECINCT 2-7, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
27	0 59773	2-7	1821	1676	102	1337	76	1452	79 74	92 04	5 60
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
800	0 081724	22015010601406B	106	76	28	76	28	106			
799	0 00703	22015010601405A	0	0	0	0	0	0			
	CUT TOTALS:		106	76	28	76	28	106			
	AFTER CUT:		1715	1600	74	1261	48	1346	78 48%	93 29%	4 31%

PRECINCT 2-9, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
29	0 68299	2-9	1928	1100	786	658	348	1232	63 90	57 05	40 77
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
720	0 021096	220150105 303	37	21	16	19	10	29			
840	0 080296	220150105 311	425	64	361	49	141	190			
	CUT TOTALS:		462	85	377	68	151	219			
	AFTER CUT:		1466	1015	409	790	197	1013	69 10%	69 24%	27 90%

PRECINCT 2-10, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
210	0 51256	2-10	950	921	18	751	10	768	80 8421	96 94736481	1 894736856
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
829	0 233301	22015010601406C	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		950	921	18	751	10	768	80 84%	96 95%	1 89%

PRECINCT 2-11, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
211	0 8399	2-11	2007	1626	301	1286	181	1526	76 03	81 02	15 00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
882	0 025438	22015010602506	0	0	0	0	0	0			
884	0 007662	22015010602510	10	0	10	0	5	5			
883	0 005615	22015010602508	59	15	41	11	28	42			
880	0 006675	22015010602509	50	13	36	13	20	34			
864	0 007306	22015010602507	1	1	0	1	0	1			
	CUT TOTALS:		120	29	87	25	53	82			
	AFTER CUT:		1887	1597	214	1261	128	1444	76 52%	84 63%	11 34%

PRECINCT 2-12B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2122	0 32027	2-12B	633	562	52	480	41	536	84 99	88 78	8 21
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
883	0 067838	22015010602612	4	4	0	2	0	2			
888	0 008453	22015010602613	0	0	0	0	0	0			
903	0 005052	22015010602614	0	0	0	0	0	0			
	CUT TOTALS:		4	4	0	2	0	2			
	AFTER CUT:		629	558	52	478	41	536	85 21%	88 71%	8 27%

PRECINCT 2-12C, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2123	0 28327	2-12C	1568	1137	362	927	255	1238	78 95	72 51	23 09
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
915	0 027196	22015010701501	5	5	0	3	0	3			
929	0 023963	22015010701402	30	22	8	22	8	30			
932	0 016284	22015010701504	79	69	4	56	3	63			
933	0 039089	22015010701406	219	195	17	184	15	205			
	CUT TOTALS:		333	291	29	265	26	301			
	AFTER CUT:		1235	846	333	662	229	937	75 87%	68 50%	26 96%

PRECINCT 2-13, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
213	0 512203	2-13	1427	1128	253	856	113	999	70 01	79 05	17 73
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
893	0 011182	22015010601103	0	0	0	0	0	0			
899	0 024858	22015010601109	0	0	0	0	0	0			

906	0 003422	22015010801110	0	0	0	0	0	0		
910	0 007947	22015010801113	0	0	0	0	0	0		
895	0 007769	22015010801102	0	0	0	0	0	0		
977	0 004106	22015010801201	0	0	0	0	0	0		
	CUT TOTALS:		0	0	0	0	0	0		
	AFTER CUT:		1427	1128	253	856	113	999	70 01%	79 05%	17 73%

PRECINCT 2-14, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
214	0 514044	2-14	2122	1687	360	1276	185	1512	71 25	79 50	16 97
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
993	0 014835	22015010801211	0	0	0	0	0	0			
1010	0 015891	22015010702503	38	34	4	25	2	27			
957	0 034359	22015010702608	195	141	47	115	28	147			
962	0 04633	22015010702607	211	171	35	133	14	152			
964	0 050706	22015010702606	197	175	9	138	6	153			
995	0 006573	22015010702610	0	0	0	0	0	0			
936	0 019384	22015010701407	130	110	18	80	7	89			
940	0 035025	22015010701408	292	178	94	143	56	213			
943	0 024396	22015010702609	130	117	2	87	2	93			
1011	0 012337	22015010702502	73	72	0	55	0	56			
1008	0 01648	22015010801218	70	31	37	27	17	46			
	CUT TOTALS:		1336	1029	246	803	132	976			
	AFTER CUT:		786	658	114	473	53	536	68 19%	83 72%	14 50%

PRECINCT 2-15, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
215	12 4389	2-15	5440	3247	1832	2275	1191	3703	68 07	59 69	33 68
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1014	0 025606	22015010702501	58	37	21	28	8	36			
1017	0 009946	22015010702504	17	12	5	9	5	14			
1182	0 005893	22015010702312	34	0	33	0	26	27			
1181	0 005615	22015010702311	24	0	24	0	17	17			
1016	0 016386	22015010702505	78	0	78	0	54	54			
1186	0 010313	22015010702313	35	0	35	0	26	26			
1187	0 0503	22015010702314	177	38	139	38	110	148			
1189	0 010085	22015010702401	189	0	184	0	118	123			
1192	0 011072	22015010702406	140	1	137	0	80	82			
1195	0 008717	22015010702408	69	9	60	6	28	34			
1196	0 003322	22015010702411	6	0	6	0	2	2			

1197	0 010629	22015010702412	45	4	41	4	17	21		
1198	0 004268	22015010702402	41	1	39	1	26	28		
1199	0 006522	22015010702405	44	0	44	0	30	30		
1200	0 010206	22015010702409	41	3	37	3	27	31		
1191	0 007951	22015010702407	34	1	33	1	21	22		
1025	0 007267	22015010702507	40	7	33	7	22	29		
1190	0 00459	22015010702506	6	0	6	0	4	4		
1194	0 004711	22015010702404	43	0	43	0	27	27		
1193	0 003281	22015010702403	25	0	25	0	17	17		
1201	0 005926	22015010702410	0	0	0	0	0	0		
	CUT TOTALS:		1146	113	1023	97	665	772		
	AFTER CUT:		4294	3134	809	2178	526	2931	68 26%	72 99%	18 84%

PRECINCT 2-15, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
215	12 4389	2-15	5440	3247	1832	2275	1191	3703	68 07	59 69	33 68
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1006	0 013649	22015010801306	59	58	0	50	0	51			
1007	0 011475	22015010801307	66	60	0	49	0	52			
1019	0 017393	22015010801305	112	84	18	64	8	79			
1021	0 011998	22015010801308	53	50	3	34	2	36			
1026	0 008052	22015010801309	42	42	0	31	0	31			
1023	0 014393	22015010801301A	0	0	0	0	0	0			
1027	0 087934	22015010801314C	230	206	9	154	6	171			
1202	0 005375	22015010801310B	1	1	0	1	0	1			
1020	0 015259	22015010801304	75	54	18	42	8	53			
1022	0 020585	22015010801302	45	43	1	34	1	36			
1024	0 011567	22015010801303	93	80	9	58	3	64			
1206	0 002456	22015010801301B	0	0	0	0	0	0			
	CUT TOTALS:		776	678	58	517	28	574			
	AFTER CUT:		4664	2569	1774	1758	1163	3129	67 09%	55 08%	38 04%

PRECINCT 2-16, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
216	0 607974	2-16	2012	1741	157	1319	86	1491	74 11	86 53	7 80
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1111	0 053003	22015010601704A	0	0	0	0	0	0			
1135	0 086167	22015010701102	0	0	0	0	0	0			

1138	0 004367	22015010701101		0	0	0	0	0	0			
	CUT TOTALS:			0	0	0	0	0	0			
	AFTER CUT:			2012	1741	157	1319	86	1491	74 11%	86 53%	7 80%

PRECINCT 2-18A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2181	41 15539	2-18A	746	389	338	293	242	548	73 46	52 14	45 31
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1937	5 623765	220150112 512A	88	82	6	64	5	69			
2070	0 482625	22015011103406B	11	6	5	4	4	8			
2073	0 136971	220150112 550	0	0	0	0	0	0			
2084	0 700701	220150112 599E									
2086	0 064993	220150112 599A									
2096	0 020596	220150112 545	5	3	2	3	2	5			
2063	0 148909	220150112 524	0	0	0	0	0	0			
2064	0 095398	220150112 525	0	0	0	0	0	0			
2115	0 269563	220150112 555	0	0	0	0	0	0			
2085	0 072243	220150112 554	0	0	0	0	0	0			
2071	0 149772	220150112 547	0	0	0	0	0	0			
2097	0 058022	220150112 599C									
2098	0 316647	220150112 546	0	0	0	0	0	0			
2103	0 094972	220150112 599D									
2104	0 033749	220150112 549	0	0	0	0	0	0			
2105	0 071077	220150112 548	0	0	0	0	0	0			
2106	0 001374	220150112 599F									
1938	6 704751	220150112 505A	86	79	0	54	0	57			
2058	0 001434	220150112 516	0	0	0	0	0	0			
2059	0 150677	220150112 514	0	0	0	0	0	0			
2102	0 653015	220150112 528	17	15	2	11	2	13			
2065	0 005459	220150112 520	0	0	0	0	0	0			
2066	0 004871	220150112 521	0	0	0	0	0	0			
2068	0 019881	220150112 513	7	7	0	5	0	5			
2088	0 117331	220150112 599B									
2061	0 022126	220150112 517	0	0	0	0	0	0			
2112	0 013345	220150112 518	0	0	0	0	0	0			
2111	0 012202	220150112 519	0	0	0	0	0	0			
2060	0 013457	220150112 515	0	0	0	0	0	0			
2095	0 023431	220150112 527	9	9	0	9	0	9			
2110	0 002376	220150112 522	0	0	0	0	0	0			
1942	0 010012	220150112 599G									

2087	0 006647	220150112 599H										
2261	0 338417	220150112 529	27	22	3	19	3	24				
2116	0 067848	220150112 556	0	0	0	0	0	0				
2067	0 039057	220150112 526	0	0	0	0	0	0				
	CUT TOTALS:		250	223	18	169	16	190				
	AFTER CUT:		496	166	320	124	226	358	72 18%	33 47%	64 52%	

PRECINCT 2-19, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
219	1 94232	2-19	2912	1844	880	1358	519	2010	69 02	63 32	30 22
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
921	0 120217	22015010601509	20	20	0	19	0	19			
925	0 034796	22015010601703	0	0	0	0	0	0			
923	0 002093	22015010601510	0	0	0	0	0	0			
	CUT TOTALS:		20	20	0	19	0	19			
	AFTER CUT:		2892	1824	880	1339	519	1991	68 85%	63 07%	30 43%

PRECINCT 2-19, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
219	1 94232	2-19	2912	1844	880	1358	519	2010	69 02	63 32	30 22
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1108	0 04655	22015010601605	178	89	76	71	51	133			
1109	0 055969	22015010601702	0	0	0	0	0	0			
1110	0 025558	22015010601704B	0	0	0	0	0	0			
	CUT TOTALS:		178	89	76	71	51	133			
	AFTER CUT:		2734	1755	804	1287	468	1877	68 65%	64 19%	29 41%

PRECINCT 2-19, CUT 3

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
219	1 94232	2-19	2912	1844	880	1358	519	2010	69 02	63 32	30 22
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1144	0 00338	22015010601701	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		2912	1844	880	1358	519	2010	69 02%	63 32%	30 22%

PRECINCT 2-19, CUT 4

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
219	1.94232	2-19	2912	1844	880	1358	519	2010	69.02	63.32	30.22
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1112	0.171434	22015010601603	26	11	1	8	1	17			
1142	0.017769	22015010601604	0	0	0	0	0	0			
	CUT TOTALS:		26	11	1	8	1	17			
	AFTER CUT:		2886	1833	879	1350	518	1993	69.06%	63.51%	30.46%

PRECINCT 2-21A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2211	9.186616	2-21A	550	496	44	373	36	414	75.27	90.18	8.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
2408	0.00849	22015011104115D	11	11	0	5	0	5			
	CUT TOTALS:		11	11	0	5	0	5			
	AFTER CUT:		539	485	44	368	36	409	75.88%	89.98%	8.16%

PRECINCT 2-21A, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2211	9.186616	2-21A	550	496	44	373	36	414	75.27	90.18	8.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
427	1.533611	22015011104207	13	13	0	10	0	10			
391	0.36755	220150111042998									
594	0.003433	22015011104238	0	0	0	0	0	0			
593	0.029078	220150111042990									
565	0.673109	220150111042368	0	0	0	0	0	0			
564	0.078877	22015011104235	0	0	0	0	0	0			
614	0.126124	220150105 403C	0	0	0	0	0	0			
597	0.009978	22015011104234	0	0	0	0	0	0			
598	0.021021	22015011104237	0	0	0	0	0	0			
602	0.013448	220150105 402	0	0	0	0	0	0			
601	0.00997	220150105 401	0	0	0	0	0	0			
595	0.018043	22015011104233	0	0	0	0	0	0			
596	0.048607	22015011104232	0	0	0	0	0	0			
450	0.080018	22015011104208	8	5	3	2	2	4			
437	0.047842	22015011104206	5	5	0	4	0	4			
	CUT TOTALS:		26	23	3	16	2	18			
	AFTER CUT:		524	473	41	357	34	396	75.57%	90.27%	7.82%

PRECINCT 2-21B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2212	19.14851	2-21B	295	290	0	195	0	200	67.80	98.31	0.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
527	0.003752	220150111044020	78	75	0	42	0	45			
	CUT TOTALS:		78	75	0	42	0	45			
	AFTER CUT:		217	215	0	153	0	155	71.43%	99.06%	0.00%

PRECINCT 2-21B, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2212	19.14851	2-21B	295	290	0	195	0	200	67.80	98.31	0.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
525	0.015635	22015011104405	74	72	0	50	0	52			
	CUT TOTALS:		74	72	0	50	0	52			
	AFTER CUT:		221	218	0	145	0	148	66.97%	98.64%	0.00%

PRECINCT 2-21B, CUT 3

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2212	19.14851	2-21B	295	290	0	195	0	200	67.80	98.31	0.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
2410	0.001291	220150106014090	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		295	290	0	195	0	200	67.80%	98.31%	0.00%

PRECINCT 2-21B, CUT 4

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
2212	19.14851	2-21B	295	290	0	195	0	200	67.80	98.31	0.00
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1149	0.002825	22015010601401	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		295	290	0	195	0	200	67.80%	98.31%	0.00%

PRECINCT 2-22, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
222	20.869	2-22	1672	1486	145	1129	120	1274	76.20	88.88	8.67
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1855	2.161465	220150111033990									
2146	0.949427	22015011103304	129	112	15	89	12	103			

2195	0.15491	22015011103307	55	51	0	40	0	42			
2196	0.15005	22015011103306	22	10	6	6	6	13			
2205	0.140229	22015011103313	43	43	0	30	0	30			
2209	0.0317	22015011103315	43	41	0	32	0	34			
2210	0.686268	22015011103316	134	123	9	69	7	77			
2279	0.009799	22015011103314	0	0	0	0	0	0			
2228	0.024393	22015011103320	0	0	0	0	0	0			
2235	0.031253	22015011103319	37	36	0	27	0	28			
2271	0.014278	22015011103325	0	0	0	0	0	0			
2225	0.021103	22015011103318	16	16	0	12	0	12			
2265	0.062244	22015011103317	45	42	0	35	0	37			
2189	0.391582	22015011103308	71	46	25	26	19	45			
2198	0.079619	22015011103311	0	0	0	0	0	0			
2204	0.032477	22015011103312	0	0	0	0	0	0			
2197	0.024536	22015011103310	0	0	0	0	0	0			
2277	0.016842	22015011103309	0	0	0	0	0	0			
2276	0.018421	22015011103303	32	32	0	24	0	24			
	CUT TOTALS:		627	552	55	390	44	445			
	AFTER CUT:		1045	934	90	739	76	829	79.33%	89.38%	8.61%

PRECINCT 3-1, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
31	1.595311	3-1	1074	711	354	553	231	787	73.28	66.20	32.96

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18
1805	0.133118	220150112 357A	55	22	33	17	17	34
1808	0.041454	220150112 361A	51	0	51	0	31	31
1811	0.020064	220150112 369	31	5	26	3	17	20
1813	0.005875	220150112 371A	29	0	29	0	21	21
1840	0.008195	220150112 360A	0	0	0	0	0	0
1863	0.020302	220150112 375A	0	0	0	0	0	0
1815	0.005836	220150112 372	14	0	14	0	6	6
1797	0.010732	220150112 351	0	0	0	0	0	0
1800	0.009516	220150112 352	0	0	0	0	0	0
1802	0.031359	220150112 362	100	47	53	44	51	95
1806	0.005549	220150112 363	11	2	9	2	5	7
1807	0.00341	220150112 350	0	0	0	0	0	0
1812	0.006272	220150112 370	38	0	38	0	22	22
1795	0.007525	220150112 349	0	0	0	0	0	0
1798	0.002797	220150112 348	4	4	0	3	0	3
1799	0.008894	220150112 356	17	5	12	5	9	14

1601	0.004335	220150112 355	9	1	8	1	5	6			
1803	0.003547	220150112 358	18	0	18	0	10	10			
1804	0.004943	220150112 359	6	0	6	0	6	6			
1790	0.002543	220150112 353	0	0	0	0	0	0			
	CUT TOTALS:		383	66	297	75	200	275			
	AFTER CUT:		691	625	57	478	31	512	74.10%	90.45%	8.25%

PRECINCT 3-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
32	86.75123	3-2	1217	655	548	499	359	867	71.24	53.82	45.03

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18
42	1.394835	220150112 109	3	3	0	2	0	2
45	1.789421	220150112 112	7	7	0	7	0	7
52	2.773776	220150112 111	25	23	2	20	2	22
35	1.298911	220150112 202	7	7	0	6	0	6
55	0.483774	220150112 228	8	8	0	7	0	7
56	2.170821	220150112 227	41	41	0	31	0	31
38	0.063093	220150112 225	0	0	0	0	0	0
39	0.482583	220150112 226	18	18	0	14	0	14
40	0.090292	220150112 201	0	0	0	0	0	0
53	0.101082	220150112 110	0	0	0	0	0	0
46	0.094894	220150112 114	0	0	0	0	0	0
51	0.100321	220150112 113	1	1	0	1	0	1
	CUT TOTALS:		110	108	2	88	2	90			
	AFTER CUT:		1107	547	546	411	357	777	70.19%	49.41%	49.32%

PRECINCT 3-2, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
32	86.75123	3-2	1217	655	548	499	359	867	71.24	53.82	45.03

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18
1708	1.218608	220150112 145	3	3	0	3	0	3
1716	0.860216	220150112 146	0	0	0	0	0	0
1724	1.992454	220150112 156	9	4	5	4	2	6
1738	0.66084	220150112 155	14	0	14	0	12	12
1705	0.725465	220150112 277	41	37	0	30	0	32
1737	0.58794	220150112 301	18	18	0	11	0	11
1742	1.11839	220150112 302B	75	52	23	42	15	57
48	0.041308	220150112 303B	8	8	0	5	0	5
1843	0.025524	220150112 304B	0	0	0	0	0	0
1731	0.007821	220150112 291	6	6	0	6	0	6

1736	0.01477	220150112	381	0	0	0	0	0	0				
1735	0.001612	220150112	380	0	0	0	0	0	0				
1709	0.782968	220150112	149	0	0	0	0	0	0				
1719	1.956456	220150112	153	21	21	0	13	0	13				
1729	0.067552	220150112	147	0	0	0	0	0	0				
1717	0.112131	220150112	148	0	0	0	0	0	0				
1725	0.006484	220150112	154	0	0	0	0	0	0				
	CUT TOTALS:			195	149	42	114	29	145				
	AFTER CUT:			1022	506	506	385	330	722	70.65%		49.51%	49.51%

PRECINCT 3-3, CUT 1

ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
33	90.9026	3-3		740	552	179	435	128	570	77.03	74.59	24.19
ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1689	0.1208	220150112	137	0	0	0	0	0	0			
	CUT TOTALS:			0	0	0	0	0	0			
	AFTER CUT:			740	552	179	435	128	570	77.03%	74.59%	24.19%

PRECINCT 3-3, CUT 2

ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
33	90.9026	3-3		740	552	179	435	128	570	77.03	74.59	24.19
ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1703	0.026965	220150112	152	0	0	0	0	0	0			
	CUT TOTALS:			0	0	0	0	0	0			
	AFTER CUT:			740	552	179	435	128	570	77.03%	74.59%	24.19%

PRECINCT 3-4, CUT 1

ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
34	80.90977	3-4		2088	700	1362	520	818	1359	65.09	33.52	65.23
ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1939	0.927628	220150112	511A	4	4	0	4	0	4			
1951	0.104732	220150112	599L									
2113	0.168583	220150112	599K									
	CUT TOTALS:			4	4	0	4	0	4			
	AFTER CUT:			2084	696	1362	516	818	1355	65.02%	33.40%	65.36%

PRECINCT 3-4, CUT 2

ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
34	80.90977	3-4		2088	700	1362	520	818	1359	65.09	33.52	65.23
ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1744	0.429326	220150112	328B	31	18	13	15	11	26			
1770	1.166913	220150112	159	22	22	0	16	0	16			
1783	0.872626	220150112	158	39	39	0	27	0	27			
1784	0.784377	220150112	157	16	8	8	5	6	11			
1788	1.135056	220150112	401	23	19	4	12	4	16			
1961	3.079701	220150112	434	43	33	10	24	6	30			
1829	1.11407	220150112	191	34	32	0	19	0	20			
1837	2.325677	220150112	426	20	18	0	13	0	15			
1952	3.449935	220150112	428	27	19	5	17	5	24			
1958	3.146774	220150112	433	30	24	6	17	5	22			
1959	1.275442	220150112	429	2	2	0	2	0	2			
1965	1.050987	220150112	607	0	0	0	0	0	0			
1967	1.260028	220150112	610	18	18	0	13	0	13			
1970	0.297232	220150112	430	0	0	0	0	0	0			
1973	1.136136	220150112	611	9	9	0	6	0	6			
2000	0.821827	220150112	423	2	2	0	1	0	1			
1969	0.571728	220150112	431	0	0	0	0	0	0			
2001	0.031557	220150112	432	6	6	0	4	0	4			
1957	0.066566	220150112	427	0	0	0	0	0	0			
1901	1.91531	220150112	190	4	4	0	4	0	4			
1963	0.205843	220150112	606	3	3	0	3	0	3			
	CUT TOTALS:			329	276	46	198	37	240			
	AFTER CUT:			1759	424	1316	322	781	1119	63.62%	24.10%	74.82%

PRECINCT 4-1, CUT 1

ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
41	105.6035	4-1		965	638	326	469	210	680	70.47	66.11	33.78
ID	Area	Name		Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1834	0.485743	220150112	633	9	9	0	9	0	9			
2123	1.348469	220150112	538	44	44	0	33	0	33			
2127	1.695969	220150112	537	74	74	0	62	0	62			
	CUT TOTALS:			127	127	0	104	0	104			
	AFTER CUT:			838	511	326	365	210	576	68.74%	60.98%	38.90%

PRECINCT 4-1, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
41	105.6035	4-1	965	638	326	469	210	680	70.47	66.11	33.78
ID	**Area**	**Name**	**Pop**	**NHspWht**	**NHspBlk**	**NHspWht18**	**NHspBlk18**	**Pop18**			
1176	4.072834	22015011103118	3	3	0	3	0	3			
2026	3.100187	220150112 602	28	26	2	22	2	24			
2030	5.647052	220150112 601	31	28	3	20	3	23			
2035	0.616166	22015011103110	4	4	0	4	0	4			
2038	2.897549	22015011103108	23	23	0	17	0	17			
2041	2.83552	22015011103115	13	11	2	8	2	10			
2043	0.116169	22015011103116	0	0	0	0	0	0			
2044	3.805941	22015011103114	0	0	0	0	0	0			
2049	0.190694	22015011103199									
1966	0.583072	220150112 608	17	17	0	14	0	14			
1968	0.856308	220150112 609	7	3	4	2	2	4			
1974	1.523927	220150112 613	32	32	0	23	0	23			
1975	0.776164	220150112 612	11	11	0	7	0	7			
1977	1.008028	220150112 626	3	3	0	2	0	2			
2434	0.010396	220150112 699									
2046	0.346455	220150112 614	3	3	0	2	0	2			
2295	5.033803	22015011103122	10	9	0	5	0	6			
2289	3.351628	22015011103134	0	0	0	0	0	0			
2290	0.056824	22015011103132	0	0	0	0	0	0			
2294	0.764213	22015011103130	1	1	0	1	0	1			
2307	0.009684	22015011103139	0	0	0	0	0	0			
2317	0.014332	22015011103140	0	0	0	0	0	0			
71	1.009174	22015011103112	11	11	0	6	0	6			
2318	0.01536	22015011103141	0	0	0	0	0	0			
2319	0.00292	22015011103131	0	0	0	0	0	0			
2320	0.006079	22015011103133	0	0	0	0	0	0			
2324	0.003463	22015011103123	4	4	0	3	0	3			
2054	0.702509	22015011103119	0	0	0	0	0	0			
2032	4.904483	22015011103104	38	37	1	25	1	26			
2036	0.088225	22015011103106	13	13	0	9	0	9			
2037	0.075536	22015011103107	0	0	0	0	0	0			
2039	0.176313	22015011103109	13	13	0	10	0	10			
2033	0.008141	22015011103105	0	0	0	0	0	0			
2051	2.601203	22015011103103	16	16	0	15	0	15			
2040	0.096908	22015011103117	14	14	0	12	0	12			

2052	0.662533	22015011103101	0	0	0	0	0	0			
	CUT TOTALS:		295	282	12	210	10	221			
	AFTER CUT:		670	356	314	259	200	459	68.51%	53.13%	46.87%

PRECINCT 4-2, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
42	35.32883	4-2	1012	885	112	631	72	713	70.45	87.55	11.07
ID	**Area**	**Name**	**Pop**	**NHspWht**	**NHspBlk**	**NHspWht18**	**NHspBlk18**	**Pop18**			
2128	0.468994	22015011103203	14	3	11	2	8	10			
	CUT TOTALS:		14	3	11	2	8	10			
	AFTER CUT:		998	883	101	629	64	703	70.44%	88.48%	10.12%

PRECINCT 4-2, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
42	35.32883	4-2	1012	885	112	631	72	713	70.45	87.55	11.07
ID	**Area**	**Name**	**Pop**	**NHspWht**	**NHspBlk**	**NHspWht18**	**NHspBlk18**	**Pop18**			
2284	2.356711	220150111032028	20	10	10	10	5	15			
2291	1.028252	220150111032010	60	40	20	28	14	42			
2292	2.997077	220150111032110	19	7	12	5	9	14			
2310	0.008933	220150111032991									
2309	0.022349	220150111032990									
	CUT TOTALS:		99	57	42	43	28	71			
	AFTER CUT:		913	829	70	588	44	642	70.32%	90.80%	7.67%

PRECINCT 4-3A, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
431	24.66573	4-3A	1432	808	602	567	378	961	67.11	56.42	42.04
ID	**Area**	**Name**	**Pop**	**NHspWht**	**NHspBlk**	**NHspWht18**	**NHspBlk18**	**Pop18**			
512	3.206368	22015011103701A	107	95	10	65	5	70			
1463	0.043509	22015011103709	6	6	0	4	0	4			
1464	0.416134	22015011103707	8	8	0	6	0	6			
1465	0.055185	22015011103705	10	10	0	8	0	8			
1466	0.003572	22015011103706	0	0	0	0	0	0			
1467	0.002239	22015011103708	0	0	0	0	0	0			
2313	0.021326	22015011103799									
2308	0.062814	22015011103703	99	93	0	59	0	64			
	CUT TOTALS:		232	214	10	142	5	152			
	AFTER CUT:		1200	594	592	425	373	809	67.42%	49.50%	49.33%

PRECINCT 4-3B, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
432	6.350969	4- 3B	1656	1332	304	1011	185	1209	73.01	80.43	18.36
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1479	2.85752	22015011105308	732	632	90	482	46	532			
1482	0.002521	22015011105309	0	0	0	0	0	0			
1580	0.018914	22015011105312	15	11	0	8	0	11			
1480	0.048265	22015011105313	125	119	6	100	2	102			
1568	0.01419	22015011105315	41	41	0	31	0	31			
1569	0.020634	22015011105316	19	16	0	12	0	15			
1567	0.047588	22015011105314	82	79	3	60	3	63			
1582	0.006863	22015011105310	17	12	5	6	2	8			
1583	0.004132	22015011105311	14	14	0	9	0	9			
	CUT TOTALS:		1045	924	104	708	53	771			
	AFTER CUT:		611	408	200	303	132	438	71.69%	66.78%	32.73%

PRECINCT 4-3B, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
432	6.350969	4- 3B	1656	1332	304	1011	185	1209	73.01	80.43	18.36
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1501	1.47395	22015011105209	214	154	60	117	40	157			
1502	0.293449	22015011105213	79	72	6	60	2	63			
1504	0.008434	22015011105215	2	2	0	2	0	2			
1503	0.038298	22015011105214	49	47	1	32	1	34			
1508	0.017856	22015011105210	11	11	0	7	0	7			
1507	0.002532	22015011105216	2	2	0	2	0	2			
	CUT TOTALS:		357	288	67	220	43	265			
	AFTER CUT:		1299	1044	237	791	142	944	72.67%	80.37%	18.24%

PRECINCT 4 C, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
433	21.3932	4- 3C	499	464	19	327	17	358	71.74	92.99	3.81
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1516	0.044625	22015011105151	10	2	8	2	7	9			
	CUT TOTALS:		10	2	8	2	7	9			
	AFTER CUT:		489	462	11	325	10	349	71.37%	94.48%	2.25%

PRECINCT 4-4, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
44	12.66578	4- 4	4448	4032	326	2750	203	3020	67.90	90.65	7.33
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1474	0.145158	22015011105401	27	13	10	9	7	20			
	CUT TOTALS:		27	13	10	9	7	20			
	AFTER CUT:		4421	4019	316	2741	196	3000	67.86%	90.91%	7.15%

PRECINCT 4-4, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
44	12.66578	4- 4	4448	4032	326	2750	203	3020	67.90	90.65	7.33
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1560	0.038665	22015011105709A	0	0	0	0	0	0			
1561	1.405619	22015011105708A	554	545	3	406	3	415			
1562	0.226511	22015011105710A	14	10	4	6	2	8			
1587	1.591996	22015011105702	196	183	10	132	10	144			
1592	0.193121	22015011105701A	159	156	0	115	0	116			
1593	0.307095	22015011105807B	3	3	0	2	0	2			
1574	1.470816	22015011105712A	46	45	0	29	0	30			
1577	0.619007	22015011105706	117	113	4	82	2	84			
1578	0.224236	22015011105714	18	15	0	10	0	12			
1584	0.233069	22015011105716	54	54	0	41	0	41			
1591	0.234483	220150111058088	39	39	0	26	0	26			
1576	0.053017	22015011105707	23	20	3	19	2	21			
1565	0.125318	22015011105404	190	174	11	104	10	118			
1566	0.015756	22015011105403	104	93	9	48	3	53			
1581	0.204097	22015011105705	57	56	0	42	0	43			
1579	0.04413	220150111057158	7	7	0	6	0	6			
1589	1.07E-05	22015011105715A	0	0	0	0	0	0			
1588	0.018802	22015011105703	16	16	0	11	0	11			
1590	0.004588	22015011105704	0	0	0	0	0	0			
2407	0.004685	220150111057088	0	0	0	0	0	0			
	CUT TOTALS:		1597	1529	44	1079	32	1130			
	AFTER CUT:		2851	2503	282	1671	171	1890	66.29%	87.79%	9.89%

PRECINCT 4-5, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
45	17.7733	4-5	748	568	161	375	110	498	66.58	75.94	21.52
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1513	1.557505	22015011105170	85	69	11	42	11	56			
1510	0.582759	22015011105172	86	84	0	44	0	46			
1603	0.301477	220150111058068	0	0	0	0	0	0			
1605	0.115913	220150111058058	0	0	0	0	0	0			
1511	0.002136	22015011105150A	0	0	0	0	0	0			
1632	0.205107	22015011105171	43	37	6	23	6	29			
	CUT TOTALS:		214	190	17	109	17	131			
	AFTER CUT:		534	378	144	266	93	367	68.73%	70.79%	26.97%

PRECINCT 4-5, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
45	17.7733	4-5	748	568	161	375	110	498	66.58	75.94	21.52
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1547	0.418559	22015011105901	26	26	0	20	0	20			
1555	0.026032	22015011105903	0	0	0	0	0	0			
1635	0.050978	22015011105904	0	0	0	0	0	0			
	CUT TOTALS:		26	26	0	20	0	20			
	AFTER CUT:		722	542	161	355	110	478	66.20%	75.07%	22.30%

PRECINCT 4-5, CUT 3

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
45	17.7733	4-5	748	568	161	375	110	498	66.58	75.94	21.52
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
82	0.453728	22015011105827C	180	177	0	116	0	119			
84	0.009301	22015011105827B	0	0	0	0	0	0			
	CUT TOTALS:		180	177	0	116	0	119			
	AFTER CUT:		568	391	161	259	110	379	66.73%	68.84%	28.35%

PRECINCT 4-6, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
46	3.27418	4-6	1664	1175	464	856	293	1165	70.01	70.61	27.88
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1625	0.138624	22015011105816A	49	32	17	24	12	36			
1617	0.56687	22015011105820A	263	97	164	74	100	176			

1629	0.13143	22015011105833	216	53	159	46	100	148			
1623	0.01039	22015011105831	25	0	25	0	14	14			
1631	0.058726	22015011105834A	26	0	25	0	16	17			
1628	0.028281	22015011105832	91	38	53	27	40	67			
1618	0.006046	22015011105830	11	0	10	0	5	6			
	CUT TOTALS:		681	220	453	171	287	464			
	AFTER CUT:		983	955	11	685	6	701	71.31%	97.15%	1.12%

PRECINCT 4-7, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
47	66.5166	4-7	2094	1136	942	792	619	1423	67.96	54.25	44.99
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
77	0.197271	220150110983028	0	0	0	0	0	0			
79	1.168967	22015011098301C	34	27	7	19	5	24			
83	0.71972	22015011098301B	74	73	0	48	0	49			
87	0.054838	22015011098302A	0	0	0	0	0	0			
215	0.390313	22015011105828	0	0	0	0	0	0			
1598	0.462329	22015011105824B	0	0	0	0	0	0			
2393	0.008329	22015011098303D	0	0	0	0	0	0			
	CUT TOTALS:		108	100	7	67	5	73			
	AFTER CUT:		1986	1036	935	725	614	1350	67.98%	52.17%	47.08%

PRECINCT 4-7, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
47	66.5166	4-7	2094	1136	942	792	619	1423	67.96	54.25	44.99
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
132	3.794215	22015011098332	140	116	24	82	14	96			
124	0.067202	22015011098328	0	0	0	0	0	0			
139	0.06742	22015011098329	0	0	0	0	0	0			
147	0.062386	22015011098333	0	0	0	0	0	0			
2429	0.048958	22015011098399A									
128	0.652801	22015011098336	23	23	0	12	0	12			
140	0.789498	22015011098335	47	46	1	36	1	37			
2432	0.024839	22015011098399A									
127	0.118047	22015011098318	12	0	12	0	5	5			
158	1.094559	22015011098339	15	14	1	12	1	13			
172	0.014724	22015011098356	4	3	0	2	0	2			
2428	0.011611	22015011098399A									
151	0.097187	22015011098341	5	5	0	2	0	2			
201	0.108835	22015011098342	0	0	0	0	0	0			

205	0.022795	22015011098399A								
150	0.133887	22015011098337	20	20	0	13	0	13		
156	0.109695	22015011098338	25	25	0	20	0	20		
157	0.143752	22015011098340	0	0	0	0	0	0		
171	1.230221	22015011098344	21	21	0	16	0	16		
173	0.280186	22015011098343	6	6	0	5	0	5		
174	0.091127	22015011098349	9	7	2	4	2	6		
178	0.574243	22015011098345	2	2	0	2	0	2		
	CUT TOTALS:		329	288	40	206	23	229		
	AFTER CUT:		1765	848	902	586	596	1194	67.65%	48.05%	51.10%

PRECINCT 4-8C, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
483	4.242834	4-8C	118	109	2	69	2	74	62.71	92.37	1.69
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1028	0.037585	22015010801399C									
1033	0.085813	22015010801314D	0	0	0	0	0	0			
1034	0.002521	22015010801399D									
1038	0.226891	22015010898104C	0	0	0	0	0	0			
1037	0.053427	22015010898199C									
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		118	109	2	69	2	74	62.71%	92.37%	1.69%

PRECINCT 4-9, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
49	99.2868	4-9	1637	1200	421	947	281	1239	75.69	73.30	25.72
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
183	1.658933	22015011098132	11	6	5	5	2	7			
185	1.387418	22015011098358	0	0	0	0	0	0			
240	0.480886	22015011098111	6	0	6	0	4	4			
241	0.384142	22015011098114	4	4	0	2	0	2			
242	0.782391	22015011098115	87	47	40	40	23	63			
245	5.973687	22015011098130	96	62	29	47	15	65			
246	0.0032	22015011098118	0	0	0	0	0	0			
339	0.468612	22015011098133	11	1	10	1	7	8			
160	4.749356	22015011098351	98	43	55	29	38	67			
176	1.191123	22015011098357	51	0	51	0	24	24			
179	0.136044	22015011098350	14	10	4	6	4	10			
177	3.256426	22015011098110	106	50	56	37	40	77			
169	0.001864	22015011098353	0	0	0	0	0	0			

170	0.014848	22015011098354	0	0	0	0	0	0		
202	0.086419	22015011098352	23	17	6	12	6	18		
263	0.007638	22015011098131	0	0	0	0	0	0		
244	0.008222	22015011098116	5	2	3	2	3	5		
243	0.0383	22015011098117	3	0	3	0	3	3		
	CUT TOTALS:		515	242	268	181	169	353		
	AFTER CUT:		1122	958	153	766	112	886	78.97%	85.38%	13.64%

PRECINCT 4-10, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
410	2.506967	4-10	4625	4005	380	2685	223	3071	66.40	86.59	8.22
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1380	0.012197	22015010804604	59	55	0	38	0	40			
1383	0.014723	22015010804606	164	150	9	94	7	106			
1382	0.005055	22015010804605	77	53	19	35	14	52			
1381	0.002965	22015010804603	73	64	8	36	4	41			
	CUT TOTALS:		373	322	36	203	25	239			
	AFTER CUT:		4252	3683	344	2482	198	2832	66.60%	86.62%	8.09%

PRECINCT 4-11C, CUT 1

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
4113	1.91839	4-11C	1376	1240	90	874	57	959	69.6948	90.1162796	6.540697575
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
554	0.04082	22015011105516	14	12	2	8	2	10			
	CUT TOTALS:		14	12	2	8	2	10			
	AFTER CUT:		1362	1228	88	866	55	949	69.68%	90.16%	6.46%

PRECINCT 4-11C, CUT 2

ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18	%Pop18	%PopNHspWht	%PopNHspBlk
4113	1.91839	4-11C	1376	1240	90	874	57	959	69.6948	90.1162796	6.540697575
ID	Area	Name	Pop	NHspWht	NHspBlk	NHspWht18	NHspBlk18	Pop18			
1419	0.002115	22015011105517A	0	0	0	0	0	0			
	CUT TOTALS:		0	0	0	0	0	0			
	AFTER CUT:		1376	1240	90	874	57	959	69.69%	90.12%	6.54%

PRECINCTS 1991

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %	TOTAL REGIS.	2/95 REGISTRATION WHITE	WHITE %	2/95 REGISTRATION BLACK	BLACK %
1-1	1,939	1,465	1,278	87.2	131	8.9	863	800	92.7	50	5.8
1-2	1,985	1,428	1,227	85.9	114	8.0	965	866	89.7	86	8.9
1-3	1,966	1,449	1,312	90.6	90	6.2	888	838	94.4	44	5.0
1-4	1,972	1,450	1,276	88.0	95	6.6	1,030	940	91.3	74	7.2
1-5	1,096	783	719	91.8	23	2.9	535	513	95.9	19	3.6
2-1	2,047	1,401	837	59.7	540	38.5	990	569	57.5	413	41.7
2-2	1,124	797	766	96.1	10	1.3	896	884	98.7	4	0.5
2-3	3,774	2,594	2,237	86.2	271	10.5	1,640	1,520	92.7	97	5.9
2-4	2,446	1,661	1,572	94.6	44	2.7	1,349	1,309	97.0	24	1.8
2-5	1,760	1,266	647	51.1	582	46.0	577	314	54.4	261	45.2
2-6	1,684	1,198	862	72.0	284	23.7	528	390	73.9	134	25.4
2-7	1,821	1,452	1,337	92.1	76	5.2	825	802	97.2	19	2.3
2-8	987	644	130	20.2	508	78.9	311	43	13.8	268	86.2
2-9	1,928	1,232	858	69.6	348	28.3	686	592	86.3	89	13.0
2-10	950	768	751	97.8	10	1.3	657	647	98.5	8	1.2
2-11	2,007	1,526	1,286	84.3	181	11.9	638	573	89.8	62	9.7
2-12A	373	306	286	93.5	16	5.2	155	146	94.2	9	5.8
2-12B	633	538	480	89.2	41	7.6	292	274	93.8	13	4.5
2-12C	1,568	1,238	927	74.9	255	20.6	400	351	87.8	47	11.8

PRECINCTS 1991

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %	TOTAL REGIS.	2/95 REGISTRATION WHITE	WHITE %	2/95 REGISTRATION BLACK	BLACK %
2-13	1,427	999	856	85.7	113	11.3	585	521	89.1	57	9.7
2-14	2,122	1,512	1,276	84.4	185	12.2	738	667	90.4	65	8.8
2-15	5,440	3,703	2,275	61.4	1,191	32.2	844	347	41.1	486	57.6
2-16	2,012	1,491	1,319	88.5	86	5.8	868	808	93.1	44	5.1
2-17A	958	620	474	76.5	104	16.8	269	234	87.0	29	10.8
2-17B	1,607	1,047	863	82.4	115	11.0	560	474	84.6	73	13.0
2-18A	746	548	293	53.5	242	44.2	455	277	60.9	177	38.9
2-18B	694	488	460	94.3	16	3.3	450	440	97.8	5	1.1
2-18C	542	387	365	94.3	13	3.4	278	273	98.2	4	1.4
2-19	2,912	2,010	1,358	67.6	519	25.8	566	441	77.9	121	21.4
2-20	1,611	1,212	1,115	92.0	44	3.6	851	827	97.2	14	1.6
2-21A	550	414	373	90.1	36	8.7	318	307	96.5	9	2.8
2-21B	295	200	195	97.5	0	0.0	189	177	93.7	12	6.3
2-22	1,672	1,274	1,129	88.6	120	9.4	1,323	1,234	93.3	82	6.2
2-23	491	441	404	91.6	12	2.7	146	140	95.9	5	3.4
3-1	1,074	787	553	70.3	231	29.4	596	441	74.0	155	26.0
3-2	1,217	867	499	57.6	359	41.4	594	371	62.5	222	37.4
3-3	740	570	435	76.3	128	22.5	391	281	71.9	110	28.1
3-4	2,088	1,359	520	38.3	818	60.2	931	367	39.4	561	60.3

PRECINCTS 1991

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %	TOTAL REGIS.	2/95 REGISTRATION WHITE	WHITE %	2/95 REGISTRATION BLACK	BLACK %
4-1	965	680	469	69.0	210	30.9	535	392	73.3	143	26.7
4-2	1,012	713	631	88.5	72	10.1	615	543	88.3	69	11.2
4-3A	1,432	961	567	59.0	378	39.3	588	344	58.5	241	41.0
4-3B	1,656	1,209	1,011	83.6	185	15.3	847	734	86.7	110	13.0
4-3C	499	358	327	91.3	17	4.8	160	148	92.5	12	7.5
4-3D	72	49	47	95.9	2	4.1	31	29	93.5	2	6.5
4-4	4,448	3,020	2,750	91.1	203	6.7	2,010	1,864	92.7	130	6.5
4-5	748	498	375	75.3	110	22.1	286	233	81.5	52	18.2
4-6	1,664	1,165	856	73.5	293	25.2	890	633	71.1	253	28.4
4-7	2,094	1,423	792	55.7	619	43.5	879	543	61.8	332	37.8
4-8A	399	260	251	96.5	5	1.9	232	218	94.0	12	5.2
4-8B	545	379	329	86.8	45	11.9	297	283	95.3	12	4.0
4-8C	118	74	69	93.2	2	2.7	95	95	100.0	0	0.0
4-9	1,637	1,239	947	76.4	281	22.7	855	703	82.2	148	17.3
4-10	4,625	3,071	2,685	87.4	223	7.3	2,043	1,827	89.4	174	9.5
4-11A	1,215	833	806	96.8	13	1.6	610	589	96.6	15	2.5
4-11B	1,325	888	794	89.4	60	6.8	584	540	92.5	34	5.8
4-11C	1,376	959	874	91.1	57	5.9	494	448	90.7	44	8.9

PRECINCTS 1990

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %
1-1	1,939	1,465	1,278	87.2	131	8.9
1-2	1,985	1,428	1,227	85.9	114	8.0
1-3	1,966	1,449	1,312	90.6	90	6.2
1-4	1,972	1,450	1,276	88.0	95	6.6
1-5	1,096	783	719	91.8	23	2.9
2-1	2,047	1,401	837	59.7	540	38.5
2-2	1,124	797	766	96.1	10	1.3
2-3	3,774	2,594	2,237	86.2	271	10.5
2-4	2,446	1,661	1,572	94.6	44	2.7
2-5	1,760	1,266	647	51.1	582	46.0
2-6	1,684	1,198	862	72.0	284	23.7
2-7	1,821	1,452	1,337	92.1	76	5.2
2-8	987	644	130	20.2	508	78.9
2-9	1,928	1,232	858	69.6	348	28.3
2-10	950	768	751	97.8	10	1.3
2-11	2,007	1,526	1,286	84.3	181	11.9
2-12	2,574	2,082	1,693	81.3	312	15.0
2-13	1,427	999	856	85.7	113	11.3
2-14	2,122	1,512	1,276	84.4	185	12.2
2-15	5,440	3,703	2,275	61.4	1,191	32.2
2-16	2,012	1,491	1,319	88.5	86	5.8
2-17	2,565	1,667	1,337	80.2	219	13.1

PRECINCTS 1990

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %
2-18	1,982	1,423	1,118	78.6	271	19.0
2-19	2,912	2,010	1,358	67.6	519	25.8
2-20	1,611	1,212	1,115	92.0	44	3.6
2-21	845	614	568	92.5	36	5.9
2-22	1,672	1,274	1,129	88.6	120	9.4
2-23	491	441	404	91.6	12	2.7
3-1	1,074	787	553	70.3	231	29.4
3-2	1,217	867	499	57.6	359	41.4
3-3	740	570	435	76.3	128	22.5
3-4	2,088	1,359	520	38.3	818	60.2
4-1	965	680	469	69.0	210	30.9
4-2	1,012	713	631	88.5	72	10.1
4-3	3,659	2,577	1,952	75.7	582	22.6
4-4	4,448	3,020	2,750	91.1	203	6.7
4-5	748	498	375	75.3	110	22.1
4-6	1,664	1,165	856	73.5	293	25.2
4-7	2,094	1,423	792	55.7	619	43.5
4-8	1,062	713	649	91.0	52	7.3
4-9	1,637	1,239	947	76.4	281	22.7
4-10	4,625	3,071	2,685	87.4	223	7.3

PRECINCTS 1990

PREC. NO.	TOTAL POP	TOTAL VAP	VOTING AGE NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC BLACK	BLACK %
4-11	3,916	2,680	2,474	92.3	130	4.9

BOSSIER PARISH, LA

Current Schoolboard Inset

Library: Bossier Parish, LA

Plan: CURRENTSCHOOLBD

DISTRICTS

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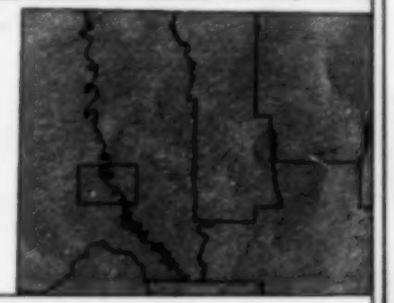
County Boundaries



Scale in Feet

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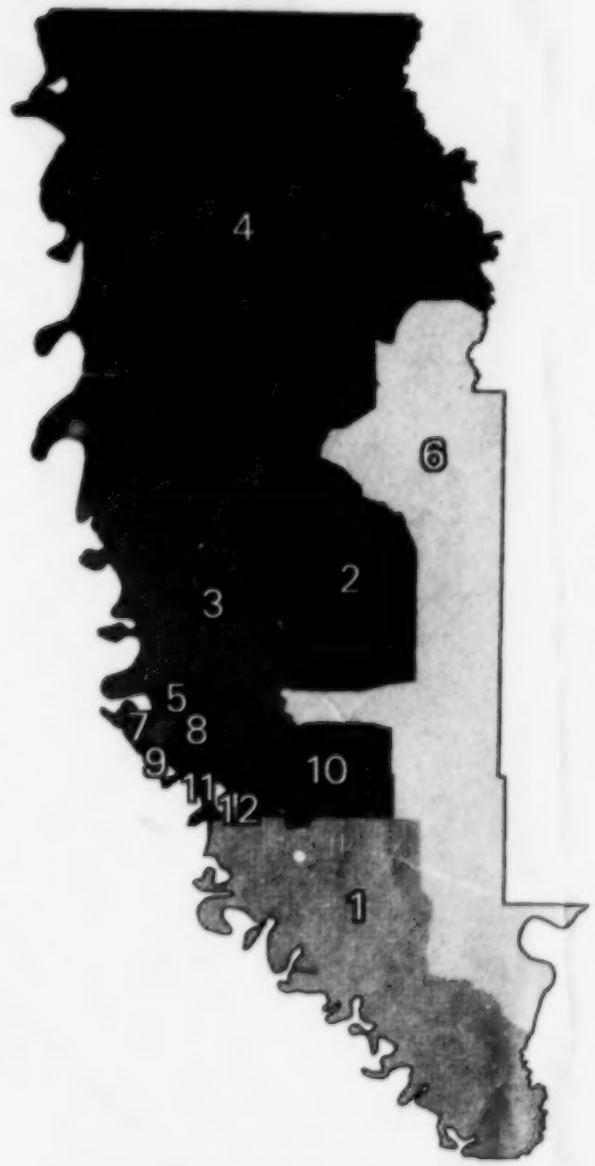
Washington, D.C., 20530

June 28, 1996



Library: Bossier Parish, LA

Plan: currentschoolbd

DISTRICTS

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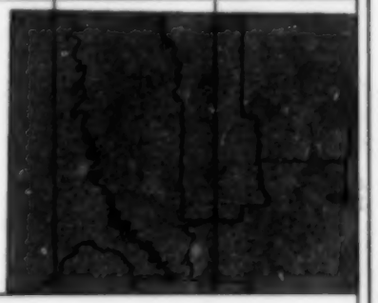
County Boundaries



Scale in Miles

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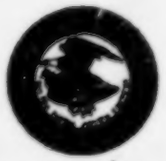

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Washington, D.C., 20530

June 22, 1998

CURRENT SCHOOL BOARD PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	TOTAL NON-HISPANIC WHITE %	VOTING AGE NON-HISPANIC WHITE	VOTING AGE NON-HISPANIC WHITE %	TOTAL NON-HISPANIC BLACK	TOTAL NON-HISPANIC BLACK%	VOTING AGE NON-HISPANIC BLACK	VOTING AGE NON-HISPANIC BLACK%	TOTAL OTHER	TOTAL OTHER%	VOTING AGE OTHER	VOTING AGE OTHER %
1	9,233	7,667	83.0	5,312	84.3	1,225	13.3	759	12.0	341	3.7	233	3.7
2	7,889	6,446	81.7	4,457	83.1	1,289	16.3	803	15.0	154	2.0	105	2.0
3	13,598	11,764	86.5	8,347	87.2	1,490	11.0	998	10.4	344	2.5	232	2.4
4	6,552	3,431	52.4	2,614	56.7	3,044	46.5	1,941	42.1	77	1.2	53	1.2
5	6,498	5,313	81.8	3,937	85.3	956	14.7	507	11.0	229	3.5	172	3.7
6	7,963	6,253	78.5	4,553	79.9	1,579	19.8	1,059	18.6	131	1.6	89	1.6
7	5,867	3,156	53.8	2,458	60.5	2,559	43.6	1,500	36.9	152	2.6	103	2.5
8	6,516	4,987	76.5	3,854	80.0	1,140	17.5	692	14.4	389	6.0	272	5.6
9	6,229	4,610	74.0	3,612	79.3	1,364	21.9	759	16.7	255	4.1	184	4.0
10	6,054	3,867	63.9	2,757	65.6	1,811	29.9	1,192	28.4	376	6.2	251	6.0
11	4,085	3,428	83.9	2,630	86.9	458	11.2	257	8.5	199	4.9	141	4.7
12	5,604	4,890	87.3	3,599	88.4	386	6.9	259	6.4	328	5.9	213	5.2

Library: Bossier Parish, LA

Plan: proposedschoolbd

DISTRICTS

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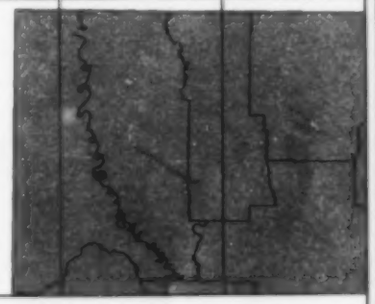
County Boundaries



Scale in Miles

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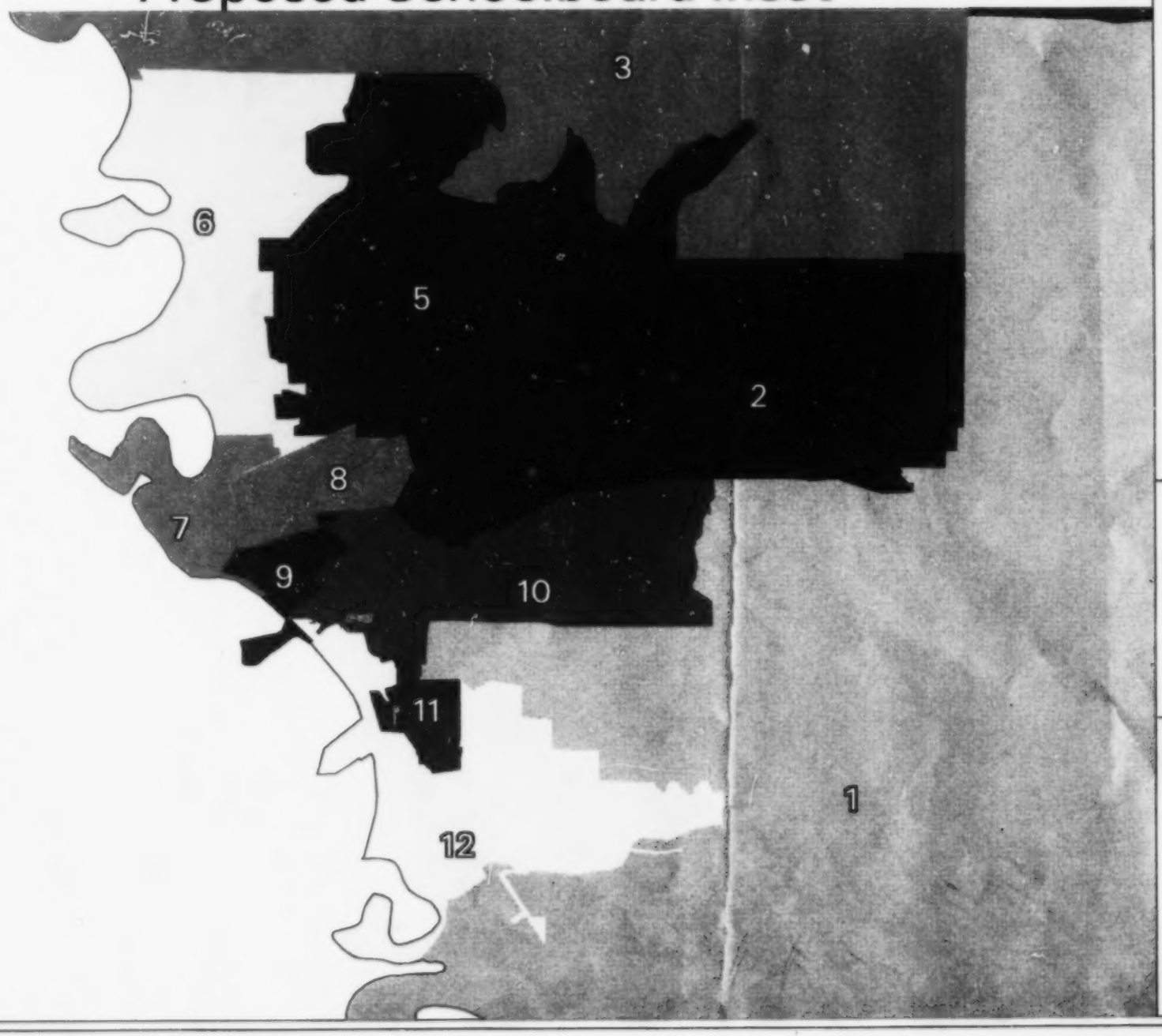
Washington, D.C., 20530

June 22, 1996

BOSSIER PARISH, LA

Proposed Schoolboard Inset



Library: Bossier Parish, LA

Plan: PROPOSEDSCHOOLBD

DISTRICTS

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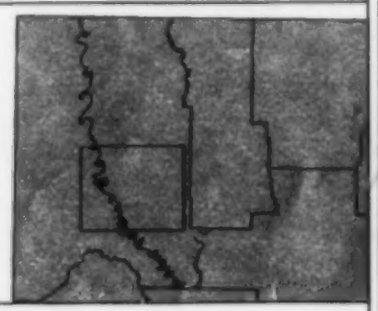
County Boundaries



Scale in Feet

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Prepared by:
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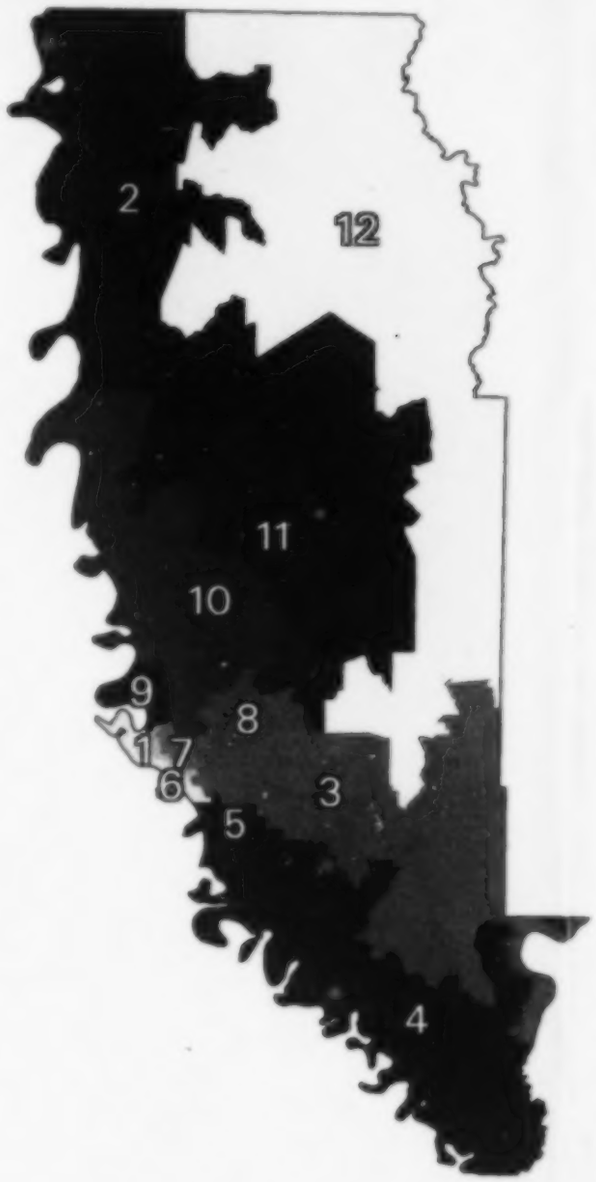
Washington, D.C., 20530

June 28, 1996

PROPOSED SCHOOL BOARD PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	TOTAL NON-HISPANIC WHITE %	VOTING AGE NON-HISPANIC WHITE	VOTING AGE NON-HISPANIC WHITE %	TOTAL NON-HISPANIC BLACK	TOTAL NON-HISPANIC BLACK %	VOTING AGE NON-HISPANIC BLACK	VOTING AGE NON-HISPANIC BLACK %	TOTAL OTHER	TOTAL OTHER %	VOTING AGE OTHER	VOTING AGE OTHER %
1	7,187	5,020	69.9	3,626	71.6	2,069	28.8	1,365	27.0	98	1.4	71	1.4
2	7,521	6,542	87.0	4,555	88.1	818	10.9	500	9.7	161	2.2	114	2.2
3	6,764	4,999	73.9	3,623	75.7	1,636	24.2	1,074	22.5	129	1.9	87	1.8
4	6,903	3,716	53.8	2,817	58.0	3,109	45.0	1,990	40.9	78	1.1	54	1.1
5	7,607	6,615	87.0	4,581	88.1	730	9.6	445	8.6	262	3.4	175	3.4
6	7,444	7,000	94.0	5,169	94.3	272	3.7	189	3.5	172	2.3	126	2.3
7	6,992	3,732	53.4	2,977	61.0	3,058	43.7	1,763	36.1	202	2.9	138	2.8
8	6,899	5,058	73.3	3,793	77.6	1,457	21.1	831	17.0	384	5.6	265	5.4
9	7,219	5,853	81.1	4,578	84.8	1,073	14.9	609	11.3	293	4.1	215	4.0
10	7,452	4,988	66.9	3,594	69.2	1,989	26.7	1,277	24.6	475	6.4	323	6.2
11	7,019	6,134	87.4	4,534	88.7	499	7.1	322	6.3	386	5.5	254	5.0
12	7,081	6,155	86.9	4,283	88.0	591	8.4	361	7.4	335	4.7	226	4.6



Library: Bossier Parish, LA

Plan: naacp

DISTRICTS

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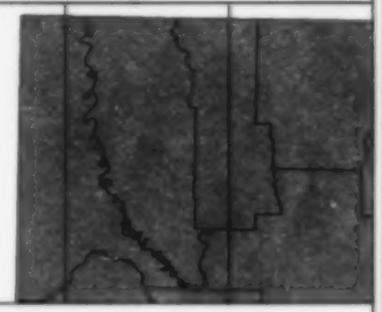
County Boundaries



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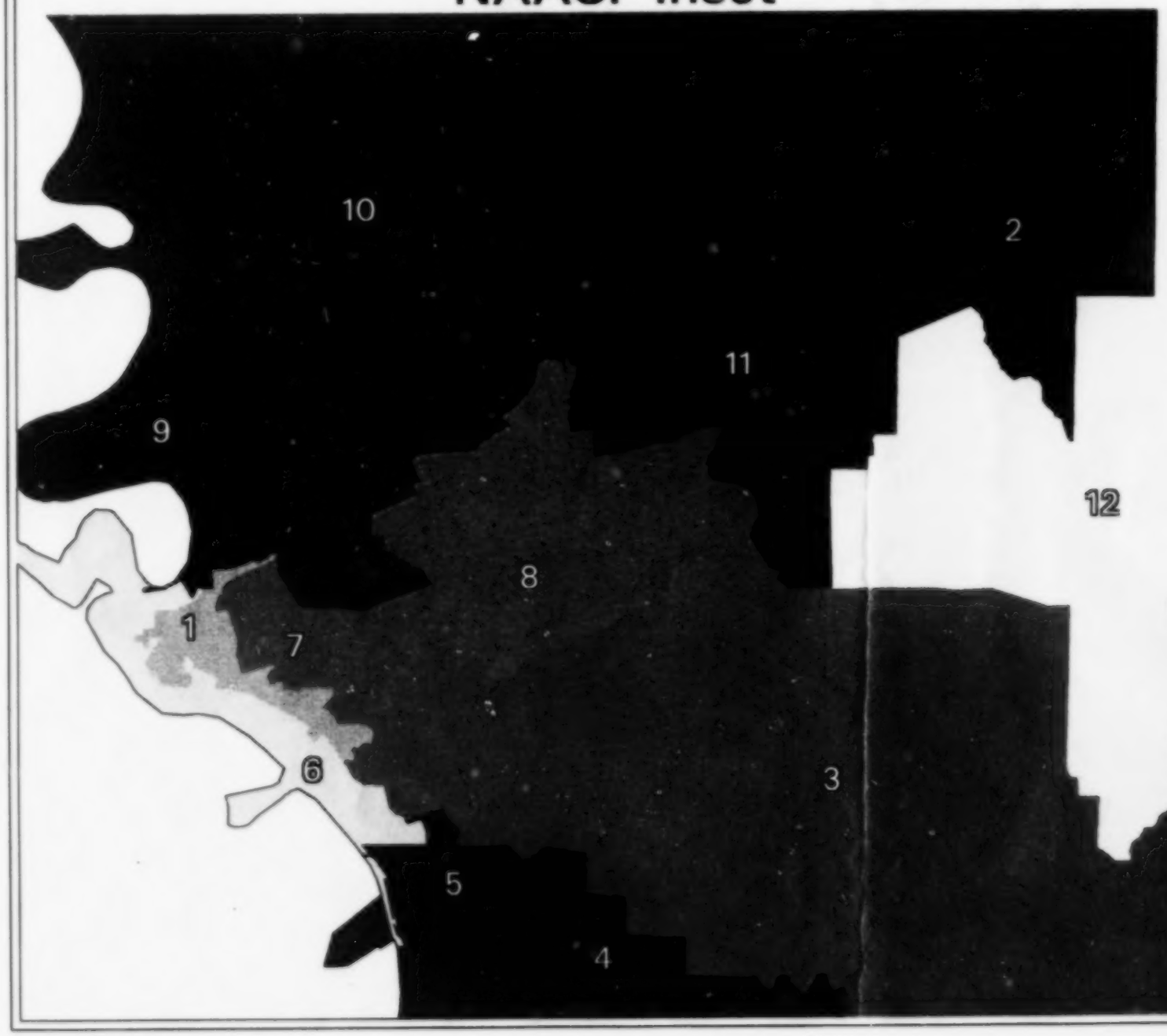
June 22, 1998

BOSSIER PARISH, LA
NAACP Inset



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Plan: NAACP

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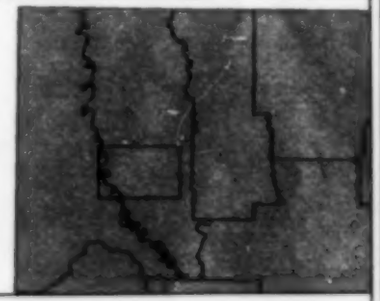
County Boundaries



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June 28, 1996

NAACP PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	TOTAL NON-HISPANIC WHITE %	VOTING AGE NON-HISPANIC WHITE	VOTING AGE NON-HISPANIC WHITE %	TOTAL NON-HISPANIC BLACK	TOTAL NON-HISPANIC BLACK %	VOTING AGE NON-HISPANIC BLACK	VOTING AGE NON-HISPANIC BLACK %	TOTAL OTHER	TOTAL OTHER %	VOTING AGE OTHER	VOTING AGE OTHER %
1	6,874	2,792	40.6	2,198	46.6	3,908	56.9	2,394	50.7	174	2.5	129	2.7
2	6,875	2,487	36.2	1,834	39.6	4,311	62.7	2,737	59.1	77	1.1	63	1.4
3	6,886	3,931	57.1	2,734	58.6	2,595	37.7	1,696	36.4	360	5.2	234	5.0
4	7,289	6,357	87.2	4,455	88.1	645	8.9	408	8.1	287	3.9	196	3.9
5	7,002	6,107	87.2	4,472	88.6	522	7.5	335	6.6	373	5.3	242	4.8
6	7,188	5,878	81.8	4,567	85.8	1000	13.9	540	10.1	310	4.3	218	4.1
7	6,823	5,966	87.4	4,716	89.4	555	8.1	337	6.4	302	4.4	223	4.2
8	7,457	6,167	82.7	4,278	84.8	950	12.7	539	10.7	340	4.6	227	4.5
9	7,427	6,676	89.9	4,942	91.9	584	7.9	309	5.8	167	2.3	126	2.3
10	7,414	6,011	81.1	4,435	83.3	1,116	15.1	702	13.2	287	3.9	187	3.5
11	7,395	6,700	90.6	4,581	91.2	514	7.0	324	6.5	181	2.5	121	2.4
12	7,458	6,740	90.4	4,918	91.0	601	8.1	405	7.5	117	1.6	82	1.5

Library: Bossier Parish, LA

Plan: cooper

DISTRICTS

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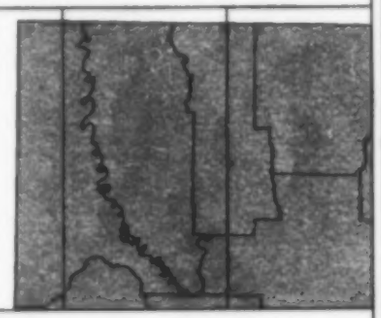
County Boundaries



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BOSSIER PARISH, LA

Cooper Inset

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Plan: COOPER

DISTRICTS

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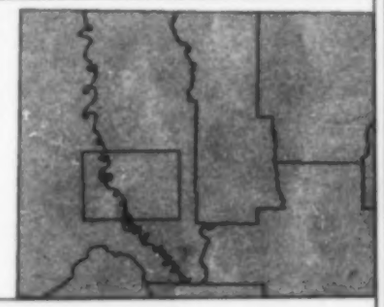
County Boundaries



Scale in Feet

0 3000 6000 9000

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June 28, 1996

COOPER PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	TOTAL NON-HISPANIC WHITE %	VOTING AGE NON-HISPANIC WHITE	VOTING AGE NON-HISPANIC WHITE %	TOTAL NON-HISPANIC BLACK	TOTAL NON-HISPANIC BLACK%	VOTING AGE NON-HISPANIC BLACK	VOTING AGE NON-HISPANIC BLACK%	TOTAL OTHER	TOTAL OTHER%	VOTING AGE OTHER	VOTING AGE OTHER %
1	6,840	6,271	92.0	4,603	92.8	393	5.8	235	4.7	176	2.6	125	2.6
2	6,840	2,543	37.2	1,975	43.8	4,135	60.5	2,427	53.8	162	2.4	106	2.4
3	7,057	5,756	81.6	4,574	84.7	1,021	14.5	622	11.5	280	4.0	207	3.8
4	7,043	5,409	76.8	4,031	80.4	1,223	17.4	692	13.8	411	5.8	294	5.9
5	7,475	6,524	87.3	4,937	88.7	548	7.3	359	6.5	403	5.4	271	4.9
6	6,886	6,267	91.0	4,702	91.4	454	6.6	327	6.4	165	2.4	114	2.2
7	7,473	6,391	85.5	4,382	86.9	792	10.6	468	9.3	290	3.9	196	3.9
8	6,839	2,750	40.2	2,010	43.6	4,012	58.7	2,543	55.2	77	1.1	59	1.3
9	7,496	6,448	86.0	4,681	87.2	927	12.4	604	11.3	121	1.6	85	1.6
10	7,335	5,794	79.0	3,983	79.9	1,127	15.4	734	14.7	414	5.6	267	5.4
11	7,399	6,423	86.8	4,509	88.0	602	8.2	359	7.0	374	5.0	257	5.0
12	7,405	5,236	70.7	3,743	72.5	2,067	27.9	1,356	26.3	102	1.4	67	1.3

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

The attached chart reflects virtually all elections in Bossier Parish during the period 1979 through 1993 for local offices featuring one or more black candidates, for which we have election returns. It does not include, however, elections for offices in the City of Shreveport as there is only one precinct in Bossier Parish (Precinct 2-23), which is located in Shreveport. This precinct represents only a small fraction of the city, the vast majority of which is located in Caddo Parish.

The abbreviation to the left of the dash in the "Dist." column denotes the jurisdiction, as follows:

B Benton

BC Bossier City

H Haughton

JDC Judicial District Court (the 26th JDC consists of Bossier Parish and Webster Parish; the data reported reflect the results of the election only in Bossier Parish)

PD Plain Dealing

PJ Bossier Parish Police Jury

SB Bossier Parish School Board

The abbreviation to the right of the dash in the "Dist." column denotes the office being filled and/or the district number (or letter) for the office, as follows:

A Board of Alderman

AL At Large position

C City Council

M Mayor

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
05/19/79 Sp.Pri.	BC-C2	39.4 (1980)	John Burnes	W	60 (12.2)
			Johnny Gipson	B	201 (40.9)
			Anthony Provenza	W	205 (41.7)
			J.G. Stahl	W	26 (5.3)
06/23/79 Sp.Gen.	BC-C2	39.4 (1980)	Johnny Gipson	B	324 (48.9)
			Anthony Provenza	W	339 (51.2)
10/27/79 Primary	PJ-J	42.7 (1980)	Johnny Gipson	B	459 (55.2)
			Thomas McDaniel (I)	W	373 (44.8)
04/05/80 Primary	B-A2	57.1 (1990)	Oscar Grubb	W	54 (48.2)
			Rutha Richardson	B	58 (51.8)
10/17/81 Primary	SB-C	28.1 (1980)	Floyd Coleman	B	389 (38.5)
			Annie Johnston	W	401 (39.7)
			Ken Larsen	W	150 (14.8)
			Nonnie Moak	W	71 (7.0)
11/28/81 Runoff	SB-C	28.1 (1980)	Floyd Coleman	B	584 (40.5)
			Annie Johnston	W	858 (59.5)
04/03/82 Primary	PD-A2	Data unavail.	Tommie Nance	B	Unopposed
10/22/83 Primary	PJ-7	29.3 (1980)	James Abrams	B	358 (22.1)
			Jerry Baker	W	385 (23.8)
			Pete Glorioso	W	875 (54.1)

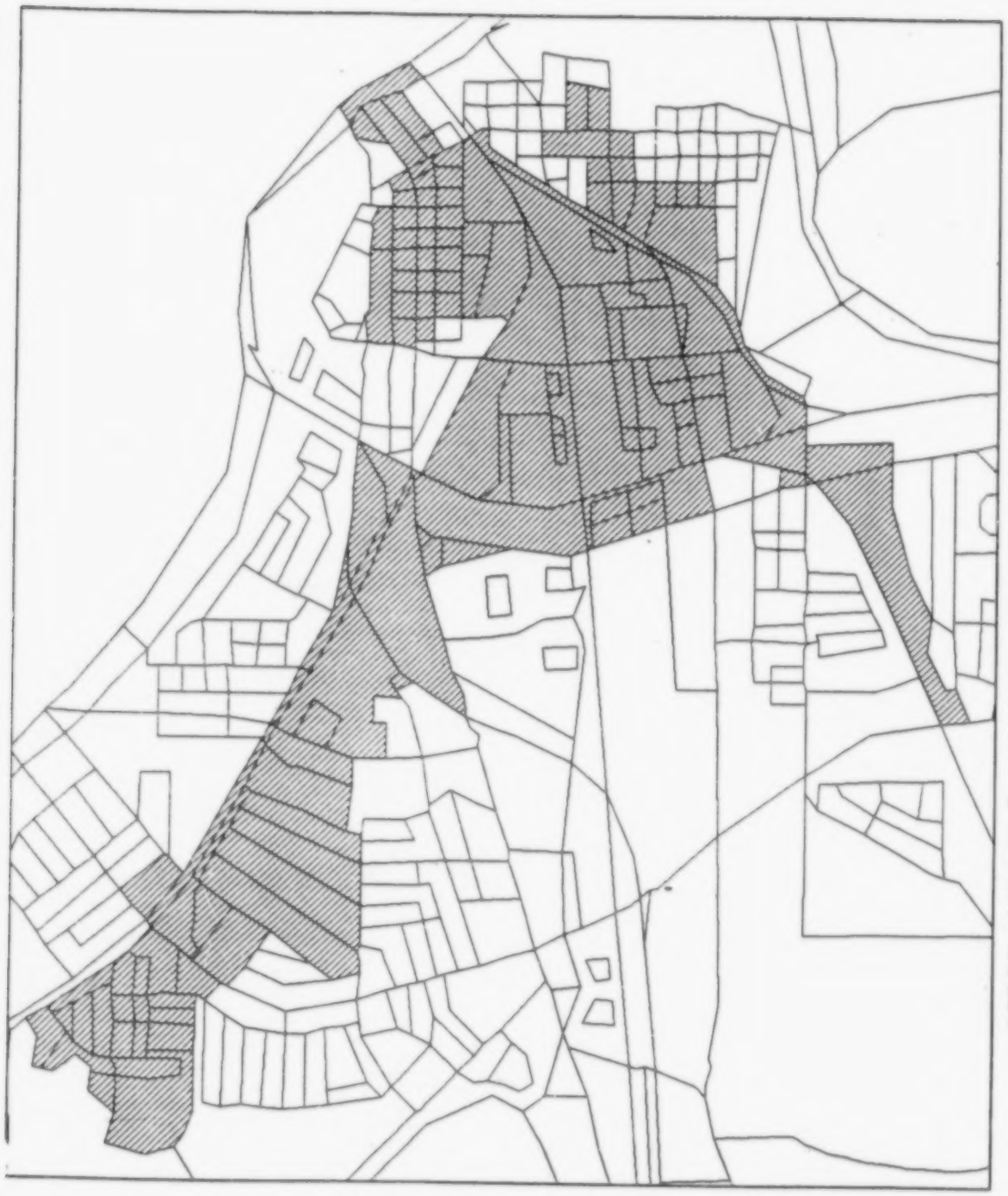
BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
10/22/83 Primary	PJ-10	37.9 (1980)	Jerome Darby	B	407 (33.0)
			Johnny Gipson (I)	B	260 (21.0)
			Thomas McDaniel	W	568 (46.0)
11/19/83 Runoff	PJ-10	37.9 (1980)	Jerome Darby	B	328 (53.2)
			Thomas McDaniel	W	289 (46.8)
04/07/84 Primary	B-A1	75.5 (1990)	J.C. Goines, Sr.	B	58 (46.8)
			Thelma Harry	B	66 (53.2)
04/07/84 Primary	B-A2	57.1 (1990)	Rutha L. Richardson	B	Unopposed
04/07/84 Primary	H-AAL	30.2 (1980)	James Bell (E)	B	396 (14.8)
			Curt Camp (D)	W	110 (4.1)
			Cashie Cole, Jr. (R)	B	237 (8.8)
			John Garland, Jr. (R)	W	213 (7.9)
			Thomas Hill (D)	W	200 (7.5)
			Conrad Isom (E)	W	357 (13.3)
			Mike Keith (E)	W	160 (5.7)
			Billy Joe Maxey (R)	W	230 (8.6)
			Johnny Ruffin (D)	B	211 (7.9)
			Shirley Stephens (E)	W	341 (12.7)
			M.H. Walker, Jr. (R)	W	228 (8.5)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
05/05/84 Runoff	H-AAL	30.2 (1980)	Cashie Cole, Jr.	B	236 (41.0)
			John Garland, Jr.	W	96 (16.7)
			Billy Joe Maxey	W	133 (23.1)
			M.H. Walker, Jr.	W	111 (19.3)
03/30/85 Primary	BC-C3	17.0 (1990)	Wanda Bennett	W	1,033 (82.8)
			Odis Easter	B	214 (17.2)
04/05/86 Sp.Pri.	B-A2	57.1 (1990)	Zella Mayfield	B	Unopposed
09/27/86 Primary	SB-J	30.1 (1990)	Jeff Darby	B	343 (45.7)
			Ruth Sullivan (I)	W	408 (54.3)
10/24/87 Primary	PJ-10	31.9 (1990)	Jerome Darby (I)	B	506 (60.5)
			Johnny Gipson	B	146 (17.4)
			Thomas McDaniel	W	185 (22.1)
10/1/88 Primary	JDC-26	20.1 (1990) Bossier Parish only	Dewey Burchett, Jr.	W	11,163 (64.3)
			Bobby Stromile	B	6,197 (35.7)
10/01/88 Primary	PJ-3		Jerry Chandler	W	449 (20.5)
			Larry Sharrah	W	523 (23.9)
			Marshall Smith	W	203 (9.3)
			Jessie Turks	B	0
			Don Whittington	W	1,014 (46.3)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
10/1/88 Primary	H-M		Lurlene Butler	W	299 (49.3)
			Harold Lee	W	308 (50.7)
			R.G. Aldricht	W	273 (10.0)
			James Bell	B	362 (13.2)
			Cecil L. Blackstock	W	343 (12.5)
10/01/88 Primary	Benton Police Chief	41.3 (1990)	Raymond Champion	W	264 (39.2)
			J.W. Hollis	W	165 (24.5)
			Robert T. Smith	B	245 (36.4)
11/08/88 Runoff	Benton Police Chief	41.3 (1990)	Raymond Champion	W	467 (58.0)
			Robert T. Smith	B	338 (42.0)
04/01/89 Primary	BC-CAL	18.0 (1990)	Sonny DePrang (E)	W	4,750 (25.3)
			Jim Johnson (E)	W	7,168 (38.2)
			Randy Rowe (D)	W	4,619 (24.6)
			Don Rushing (D)	B	2,222 (11.8)
04/01/89 Primary	BC-C4	18.9 (1990)	Bill Schwartz	W	922 (49.8)
			Earl Smith	B	137 (7.4)
			Billy Williams	W	791 (42.8)
04/01/89 Primary	BC-C2	25.6 (1990)	Donald Brown	W	449 (42.0)
			Jeff Darby	B	356 (33.3)
			Anthony Provenza (I)	W	265 (24.8)

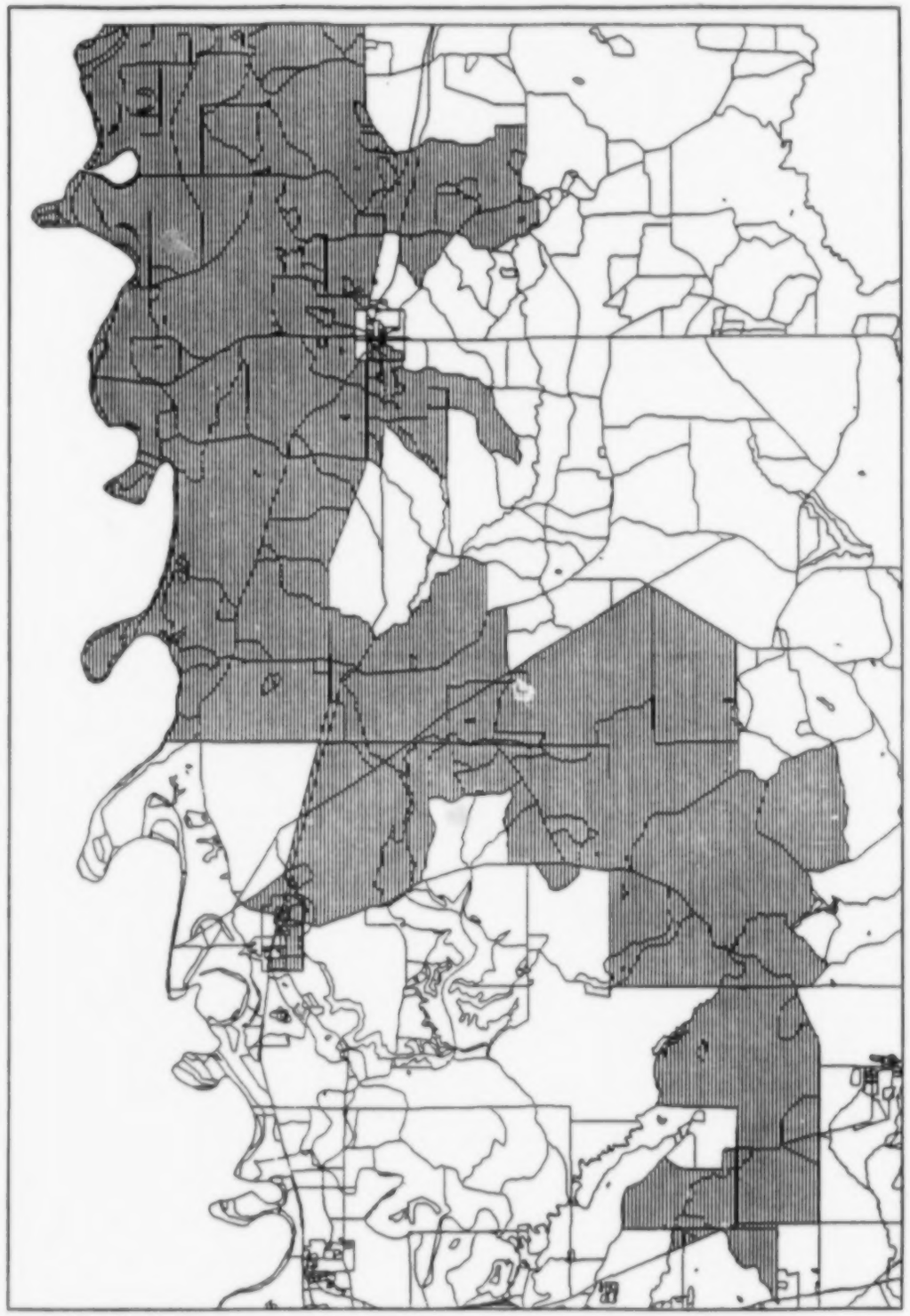
BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
04/29/89 Runoff	BC-C2	25.6 (1990)	Donald Brown	W	595 (48.5)
			Jeff Darby	B	631 (51.5)
10/06/90 Primary	SB-J	30.1 (1990)	Johnny Gipson	B	430 (46.8)
			Ruth Sullivan (I)	W	489 (53.2)
10/19/91 Primary	PJ-7	43.9 (1990)	Pete Glorioso (I)	W	1,099 (64.5)
			Leonard Kelly	B	604 (35.5)
10/19/91 Primary	PJ-10	26.9 (1990)	Jerome Darby (I)	B	Unopposed
10/19/91 Primary	H-M	27.9 (1990)	Cecil Blackstock (I)	W	458 (73.6)
			Mark Hill	B	67 (10.8)
			George Hunter	W	97 (15.6)
03/10/92	B-M	41.3 (1990)	Thelma Harry	B	218 (36.2)
			Joe Stickell	W	378 (62.8)
			Ronny Vaughn	W	6 (1.0)
10/03/92	H-AAL	27.9 (1990)	Pee Wee Anderson	W	294 (15.9)
			Cashie Cole, Jr. (I)	B	256 (13.9)
			Jack Hicks	W	323 (17.5)
			Mike Hollis	W	264 (14.3)
			Frank Jones	W	158 (8.6)
			Billy Joe Maxey	W	288 (15.6)
			Elbert Winfield	B	263 (14.3)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993					
Election	Dist.	%Black (Census)	Candidate(s)	Race	Vote (%)
04/03/93 Special	SB-K	11.3 (1990)	Jerome Blunt (I)	B	93 (23.9)
			Juanita S. Jackson	W	296 (76.1)
10/16/93 Special	BC-C1	7.5 (1990)	Donald Ardoyno	W	436 (29.8)
			Gordon Blackman	W	881 (60.1)
			Will Jones	B	148 (10.1)
10/16/93 Special	BC-C2	42.2 (1990)	Jeff Darby (I)	B	416 (46.7)
			"Jim" Sawyer	W	474 (53.3)

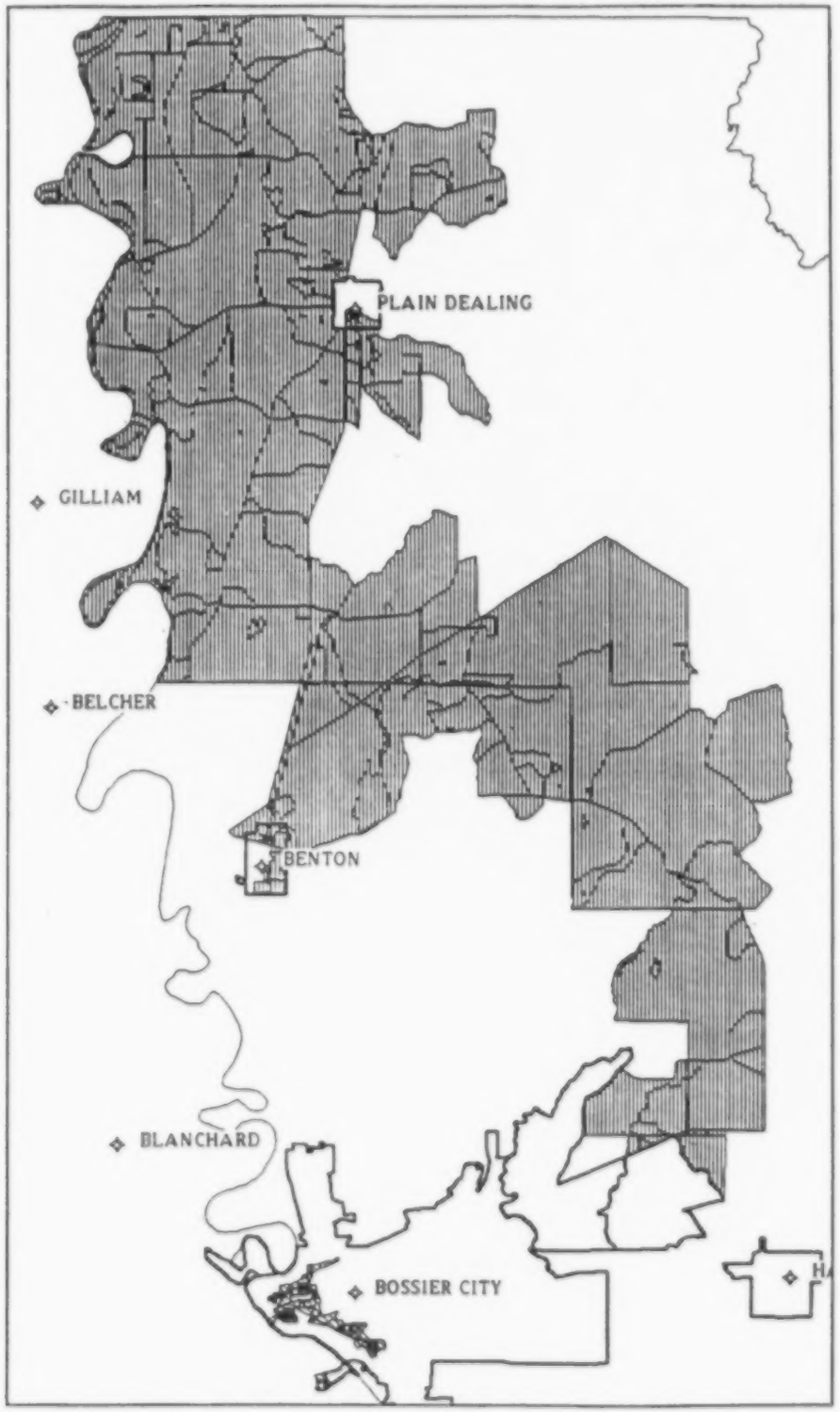


Bossier Parish, School Board District 1, NAACP Draft

Bossier Parish, School Board District 2, NAACP Draft



Bossier Parish, LA. School Board Districts, NAACP Draft



Bossier Parish, LA. School Board Districts, NAACP Draft

DIST	POP	PctHSP	PctNHB	PctB&H	PctNHW	DEVIATION
1	6913	1.42	56.76	58.18	40.72	-3.638
2	6854	0.85	62.62	63.47	36.26	-4.461

Bossier Parish, LA. School Board Districts, NAACP Draft

DIST	POP	PctHSP18	PctNHB18	PctB&H18	PctNHW18	DEVIATION
1	6913	1.52	50.57	52.08	46.72	-3.638
2	6854	1.00	58.97	59.97	39.67	-4.461

(13) (11)

Nos. 98-405, 98-406

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1998

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

**On Appeal From The
United States District Court
For The District Of Columbia**

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STATEMENT OF THE CASE

While appellants paint the disturbing picture of a monolithic white majority imposing a redistricting plan which permanently disenfranchises black voters, this picture bears little resemblance to the facts or the actual electoral results in Bossier Parish. In adopting the plan at issue here, the Bossier Parish School Board (the "Board") selected the only plan presented to it that conformed to state law, since private appellants' maximization plan (the "NAACP plan") concededly constituted a facial violation of state law, as well as numerous other neutral redistricting criteria. J.A. 376-77 (La. Rev. Stat. § 17:71.3(E)(1)).[1] The plan that was chosen had already been precleared by the Department of Justice just one year before. J.A. 86. In operation, the Board's plan has resulted in the election of *three* black members to the Board.

Bossier Parish is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. Although no electoral district of the Police Jury has ever had a majority of black voters, Jerome Darby, a black resident of Bossier Parish, had been elected three times (the last time without opposition) by 1992 to represent a majority-white district as a member of the Police Jury. App. 79a. Another black representative preceded Mr. Darby in that district. J.A. 516-17.

On April 30, 1991, all members of the Police Jury, including Jerome Darby, its black member, approved a redistricting plan for the Police Jury containing two districts with substantial black populations, but no district with a black majority. Specifically, District Four was 45.2% black, and District Seven was 43.9% black. App. 164a ¶ 59. The plan was submitted to the Justice Department on May 28, 1991,

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[1] In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statements in this appeal ("U.S. J.S."), ("A-I J.S."), to the Joint Appendix ("J.A."), to the United States and appellant-intervenors' briefs ("U.S. Br."), ("A-I Br.") and Oppositions to Motion to Dismiss ("U.S. Opp."), ("A-I Opp."), and to the trial transcript in the court below, No. CR 94-445 (D.D.C.) ("Tr.").

and on July 29, 1991, the Attorney General precleared it. Contrary to the misleading representations of appellants, the concerns of the black community were conveyed to the Justice Department prior to preclearance. *See* Hawkins Testimony at 6 ¶ 11.

Given that the Board and the Police Jury had shared the same district boundaries until 1980, the Board approached the Police Jury to formulate a common redistricting plan. App. 81a. The Police Jury rejected this overture. App. 107a. State law expressly prohibited the Board from changing, splitting, or consolidating the precincts established by the Police Jury for the Police Jury's 1991 redistricting plan. J.A. 376-77 ("The boundaries of any election district for a new apportionment plan from which members of a Board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1."). Thus, it would have been a facial violation of state law for the Board to adopt the NAACP plan or, for that matter, any plan that created a black majority district, because it is stipulated that: "It is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines." App. 195a ¶ 152. The failure to abide by this mandatory state law requirement would have rendered the Board's plan "null and void." J.A. 377.

Appellants assert that the *Police Jury* could have split precinct lines so that the NAACP plan might be adopted. This is demonstrably false. Under state law, the Board was required to redistrict *prior to December 31, 1992*. J.A. 88-89; J.A. 406-07 (La. Rev. Stat. § 17:71.5) (state law required redistricting to be complete on December 31 of the second year following the year in which the President received the census report, which under 13 U.S.C. § 141(b), was 1990). And under state law, the Police Jury could only make changes to its existing precincts *after December 31, 1992*. J.A. 389 (La. Rev. Stat. § 18:532.1(H)(1)). Thus, it was *impossible* for *either* the Board *or* the Police Jury to sanction any precinct splits prior to the mandatory deadline for the Board to adopt a redistricting plan. This requirement under state law that Boards and Police Juries use the *same* precincts as "building

blocks" for their districts is, of course, entirely rational.[2] Splitting precincts by divergent district lines engenders substantial costs and creates significant voter confusion. App. 107a; *see Bush v. Vera*, 517 U.S. 952, 974-75 (1996). Thus, even assuming (as the district court did to give appellants every benefit of the doubt) that the Police Jury somehow could have retroactively created 65 additional precincts to render the NAACP plan lawful, neither it nor the Board had any rational reason to do so.

Moreover, the conclusion that state law prohibited the adoption of any plan creating a black-majority district was uniformly acknowledged by the parties at the time the Board was considering which plan to adopt. Specifically, the Board was correctly advised both by its cartographer and the Parish's District Attorney during the September 3, 1992 meeting where the NAACP plan was presented that its massive number of precinct splits violated state law. App. 83a-84a; App. 179a ¶ 102. Likewise, the NAACP itself acknowledged this state law prohibition in 1992, and merely contended that the Supremacy Clause of the United States Constitution required the Board to ignore state law. J.A. 195-96.

The NAACP plan included two majority-black districts, the maximum possible number of such districts and roughly proportional (2/12) to the Parish's black voting age population of 17.6%. App. 83a. The plan was drawn by William Cooper for the exclusive purpose of "creat[ing] two majority black districts." J.A. 371. The NAACP plan subordinates traditional redistricting principles, because it is not compact,[3]

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[2] Although the Police Jury and Board used different *district* lines for the first time in the 1980s, they had *never* split precinct lines, and the unrebutted evidence is that none of the redistricting plans submitted for the Board's consideration by its cartographer created such splits. J.A. 250-51; Tr. (Myrick) at 118.

[3] A stipulation suggests that it was obvious, apparently to some unnamed members of the Police Jury in 1991, that one "reasonably compact" majority-black district could be established within Bossier City. App. 154a ¶ 36. This *subjective* assessment of some of the Police Jurors

splits all three town boundaries in the Parish and dramatically departs from the Police Jury districts. J.A. 458, 464, 509-10. In direct contravention of Louisiana law, the NAACP plan splits 46 precincts, 65 times. J.A. 471-96; App. 108a (some of the precincts suffering more than a single split; thus requiring that they become three or more new precincts). Of these, 17 precincts would have had less than 20 people in them. J.A. 471-96.

On September 3, 1992, the Board responded to NAACP concerns by granting its request that a black person, Jerome Blunt, be appointed to the vacant seat on the Board. This reflects "the Board's demonstrable willingness to *ensure* black representation on the Board. . . . " App. 112a (emphasis in original). At the same September 1992 meeting, the Board also passed a motion of intention to adopt the Police Jury's redistricting plan. The jury plan offered "the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need [to be] redraw[n])." App. 106a. By maintaining the integrity of the Police Jury's precincts, the Board not only complied with Louisiana law, but also avoided the costs and disruptions that would have accompanied the NAACP plan. Furthermore, the Board understandably assumed that the Department of Justice would automatically preclear a plan that was *identical* to one the Department found to be entirely free of any discriminatory purpose or effect just one year before. With two districts well over 40% black, the plan also offered the substantial promise that black voters would be able to elect a candidate of their choice.

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has no reference to the *objective* feasibility of creating a "reasonably compact" majority-black district in Bossier City. Furthermore, the parties introduced substantial evidence, including a federal court finding, demonstrating it was not feasible to create a "reasonably compact" majority-black district in Bossier City, which is why it has never been drawn. *See, e.g.*, J.A. 471-96; J.A. 48-49, 51-52. Thus, any contrary stipulation should be disregarded. *PPX Enter., Inc. v. Audiofidelity, Inc.*, 746 F.2d 120, 123 (2d Cir. 1984); *Coastal States Mktg., Inc. v. Hunt*, 694 F.2d 1358, 1369 (5th Cir. 1983).

On January 4, 1993, the Board submitted its plan to the Department of Justice for preclearance. Despite the identity between the Police Jury and Board plans, the Department denied preclearance citing "new information, particularly the 1991 [P]olice [J]ury elections held under the 1991 redistricting plan and the 1992 redistricting process for the [S]chool [B]oard." App. 235a. Yet, the only noteworthy event of the 1991 Police Jury elections was that Jerome Darby was once again re-elected, this time without opposition, to represent a majority-white district.

Two elections have been held under the redistricting plan adopted by the Board. In 1994, two black candidates were elected to the Board. Julian Darby was elected from district 10, which is only 26.7% black. J.A. 508. Vassie Richardson, who is also black, was elected from district 4, which is 45% black. J.A. 508. In the interim period between elections, the Board appointed Kenneth Wiggins, an African-American, to fill a vacancy in district 8 on the Board. In the 1998 elections, Mr. Wiggins was re-elected over a white opponent in a district that is only 21.1% black. J.A. 508; Official Elections Results attached to Motion to Dismiss or Affirm at A4. Also, both Julian Darby and Vassie Richardson were again elected, this time without opposition. *Id.* at A8.[4] As a result of these

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[4] It is well established that a court may take judicial notice of any fact that is not subject to reasonable dispute and is capable of accurate and ready determination. *See, e.g.*, Fed. R. Evid. 201; *De Castro v. Board of Comm'rs*, 322 U.S. 451, 463 (1944) (appellate court had "properly take[n] judicial notice" of election results); *Brown v. Piper*, 91 U.S. 37, 42 (1875) ("In this country, such [judicial] notice is taken of . . . the election and resignations of senators. . . . "). Accordingly, courts routinely take judicial notice of post-trial elections and changes in representation in voting rights and other cases. *See, e.g., Winpisinger v. Watson*, 628 F.2d 133, 138 n.28 (D.C. Cir.), *cert. denied*, 446 U.S. 929 (1980); *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 827 & n.3 (9th Cir. 1986); *Southern Christian Leadership Conference v. Sessions*, 56 F.3d 1281, 1288 n.13 (11th Cir. 1995), *cert. denied*, 516 U.S. 1045 (1996); *Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 (5th Cir. 1990). Finally, appellee did not have an opportunity to present the 1998 election results to

elections in which three blacks have been elected to the Board, blacks now enjoy extra-proportional representation of *25%* (3/12) on the Board in a parish with only *20.1%* black population and *17.6%* black voting age population. App. 79a. The election of three black members thus completely refutes appellants' repeated claim that the clearly "foreseeable effect" of the plan was to prevent any black candidates from being elected and that the white population will not vote for black candidates in Bossier Parish. *See, e.g.*, U.S. Br. 17; A-I Br. 28.[5]

The Board subsequently sought a declaratory judgment from the three-judge District of Columbia court preclearing its proposed redistricting plan. The district court has now concluded on two separate occasions that the plan is free of discriminatory purpose or effect.[6] *See Reno v. Bossier Parish School Board*, App. 29a-77a ("*Bossier I*").

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the district court as the election was held *after* the district court entered its decision on remand.

[5] *There is no competent evidence of racial bloc voting in any local Bossier Parish elections*. Specifically, the Justice Department's expert was concededly unable to find *any* racial bloc voting in *any* election for *any* Bossier Parish office, pursuant to either the "extreme case analysis [or] bivariate ecological regression analysis" endorsed by the *Gingles* plurality opinion. *Thornburg v. Gingles*, 478 U.S. 30, 52-53 (1986); J.A. 167-74. The *only* election where racial bloc voting was found was one "exogenous" *state judicial* race (held not just in Bossier Parish), which obviously reflects different voting patterns than those for *local representative* office. J.A. 165-67. *See, e.g., Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143, 1149 (5th Cir.), *cert. denied*, 510 U.S. 994 (1993). Even in this single race, the "racial polarization" led to the black candidate receiving 35.7% of the vote in a parish with a 17.6% black voting age population. J.A. 518.

[6] The district court faithfully applied the *Arlington Heights* analysis in both its initial decision and on remand. *See, e.g.*, App. 5a-6a, 102a-105a (evidence pertaining to dilutive impact of plan); App. 6a-7a, 112a (history of discrimination); App. 7a, 108a, 111a-112a (sequence of events leading up to decision); App. 7a, 85a (substantive departures from factors usually considered important); App. 7a-8a, 83a, 109a-111a (alleged contemporaneous statements by Board members).

SUMMARY OF ARGUMENT

This appeal is nonjusticiable because no legally cognizable interest can be harmed by a redistricting plan that will not be used again. Further, the district court did not decide that § 5 reaches only voting changes adopted for a retrogressive purpose. Indeed, the court below unequivocally declined to resolve this issue because it found that the facts demonstrating a "nonretrogressive, but nonetheless discriminatory, purpose . . . are not present here." App. 3a-4a (internal quotations omitted).

In any event, Section 5's plain language demonstrates that the purpose inquiry under that statute relates exclusively to retrogressive intent. Section 5 requires a covered jurisdiction to demonstrate that any voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " Since a change has the "effect" of "denying or abridging the right to vote" only if it causes retrogresssion, it has the "purpose" of "abridging" only if it is intended to cause retrogression. No principle of statutory construction or common usage would suggest that a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun.

This does not mean, as appellants believe, that § 5 fails to proscribe a purpose to dilute minority voting strength. It simply means that dilution is measured by a different benchmark than in a constitutional challenge, *i.e.*, the existing redistricting system rather than a hypothetical alternative plan. Thus, just as in *Bossier I*, appellants impermissibly attempt to "shift the focus of § 5 from nonretrogression to vote dilution, and to change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." App. 37a-38a. The only difference here is that appellants seek to make the relevant § 5 question whether the *purpose* of a voting change is "vote dilution" relative to a "hypothetical, undiluted plan," rather than relative to the existing plan. Thus, in appellants' hands, § 5 is not a mechanism for protecting minority voters from stratagems designed to

weaken their electoral position, as Congress intended, but instead becomes a means for the Justice Department to impose its hypothetical minority "maximization" plan. Nor is there any basis for concluding that § 5 prohibits the "purpose" proscribed by the Constitution because there is no congruence between the Constitution and § 5, and because, even if the statute prohibits only retrogressive vote dilution, it still goes farther than the Fifteenth Amendment that it was intended to enforce.

Finally, there is also no basis for denying preclearance in a § 5 proceeding to a voting change that satisfies the non-retrogression purpose standard of *Section 5* on the grounds that it violates the *Constitution*. The *dicta* in *Beer v. United States*, 425 U.S. 130 (1976), particularly as subsequently construed, only confirms the obvious point that a reapportionment plan which satisfies § 5 may be enjoined in a *subsequent* constitutional challenge. This result is also the only one consistent with the express language of § 5. Alternatively, even if constitutional questions are within the province of § 5 courts, it is clear and conceded that the *United States* bears the burden of proving a constitutional violation.

ARGUMENT

I. THIS APPEAL IS NONJUSTICIABLE.

Appellants seek to have this Court opine on the legal validity of a redistricting plan that will never again be used in any election. Article III prevents such an advisory opinion as appellants lack standing and the case is now moot. It has long been recognized that the "case-or-controversy requirement [of Article III] subsists through all stages of federal judicial proceedings, trial and appellate." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). Accordingly, "[t]he standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). Likewise, "Article III of the Constitution requires that there be a live case or controversy at the time that a federal court decides the case; it is not enough that

there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." *Burke v. Barnes*, 479 U.S. 361, 363 (1987). Therefore, Article III requires a case to be dismissed as moot "if an event occurs [pending review] that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

There is no case or controversy here because, regardless of whether the Court affirms or remands the lower court's declaratory judgment preclearing the Board's 1992 redistricting plan, that plan will not be used again. One month after appellants filed their jurisdictional statements in this Court, the last scheduled election ever to be held under the Board's plan was conducted, and three black candidates were elected. The Board's plan will not be utilized again because, under Louisiana law, the next Board election will not take place until 2002. J.A. 373 (La. Rev. Stat. § 17:52). By that time, new federal decennial census data will be available, and thus the Board will be required under state law and this Court's one-person one-vote precedents to adopt a new apportionment plan. J.A. 406 (La. Rev. Stat. § 17:71.5). Accordingly, the current plan is already a dead letter, and if there is a remand, the Board will move to dismiss its complaint. In the terms of § 5, the voting "practice" at issue here will never again be "enforced" by any official in Bossier Parish. 42 U.S.C. § 1973c. *See Watkins v. Mabus*, 502 U.S. 954, 954-55 (1991); *Hall v. Beals*, 396 U.S. 45 (1969). Accordingly, as the parties "invoking federal jurisdiction," appellants have failed to carry their burden of establishing that they have a "legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). It is clear that appellants will not suffer "actual or imminent" injury under a plan that will never again be utilized, and thus they have no standing to invoke this Court's jurisdiction. *Id.* at 560 (internal quotations omitted).[7]

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[7] For the same reason, this case is now moot and there is no relief that the Court can grant which will redress appellants' purported injuries. *See,*

Consequently, just as it is now too late for appellants to challenge the Board's redistricting plan under § 2 in district court, it is too late for them to bring their appeal.

Appellants speculate that a Board member might die or resign in the next two and a half years, necessitating the use of the challenged plan to fill that vacancy. Appellants have offered *no* evidence that a vacancy on the Board is "certainly impending" or even likely. *Lujan*, 504 U.S. at 564 n.2 (internal quotations omitted). When a case involves uncertain or "contingent future events that may not occur as anticipated, or indeed may not occur at all," Article III's imminence requirement is not satisfied. *Lewis*, 494 U.S. at 480 (internal quotations omitted). Likewise, appellants' suggestion that the Board will violate its state law duty to engage in timely redistricting after the 2000 census is "unadorned speculation." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 44 (1976). In any event, they are flatly wrong in suggesting that, if no new redistricting plan is developed, then the grossly malapportioned 1990s plan could, much less will, be used for the 2002 elections. U.S. Opp. 1; J.A. 406.

Unable to identify any legally cognizable interest in *this* "case or controversy," appellants claim that Article III is satisfied because a different court in a different case "*might*" grant different relief they might be "interested" in, *i.e.*, invalidating the 1998 elections and holding new elections under some unidentified "valid plan." U.S. Opp. 2; A-I Opp. 3. Appellants hypothesize a future lawsuit in a local Section 5 court which would somehow invalidate the 1998 elections. Although it is true that a local district court, as a corollary power, may sometimes order new elections where the voting procedure used in that election had *not been precleared*, *see, e.g.*, *Berry v. Doles*, 438 U.S. 190, 192 (1978), it plainly has no power or jurisdiction to invalidate election results where,

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e.g., *Burke*, 479 U.S. at 363; *Oil, Chem. and Atomic Workers v. Missouri*, 361 U.S. 363, 371 (1960); *Northeastern Fla. Chapter of Associated Gen. Contractors v. Jacksonville*, 508 U.S. 656, 669-70 (1993) (O'Connor, J., dissenting).

as here, the new plan had been duly *precleared*. If appellants are suggesting that the local district court could invalidate elections held under an *erroneously* precleared plan, that is impossible as it would require the local district court to decide whether the plan was correctly or erroneously precleared, which it plainly may not do.[8]

Appellants finally argue that the 1990s redistricting plan somehow injures them because, absent reversal, it will serve as the retrogression "benchmark" for the 2000 redistricting plan. But appellants cannot rationally explain why this matters to them because, if the 1990s plan is somehow eliminated, then the *1980s plan* will be the benchmark.[9] *Abrams v. Johnson*, 521 U.S. 74, 95-97 (1997). All agree that there is no difference between the 1980s and 1990s Board plan since they contain materially the same racial percentages and neither has a black majority district; so appellants have no cognizable interest in substituting one retrogression benchmark for an *identical* one. App. 88a. In any event, the only legally cognizable interest appellants have in the 1990s plan is whether it injures any group's "right to *vote*." 42 U.S.C. § 1973c. Since the 1990s redistricting plan does not potentially injure *that* interest, the Court cannot engage in hypothetical adjudication of a non-controversy because the *collateral* consequences of that decision are of hypothetical interest in a *future* proceeding.[10] *Spencer v. Kemna*, 118 S. Ct. 978, 984-87 (1998).

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[8] This Court has repeatedly emphasized that local Section 5 district courts are "strictly limited" to addressing "[t]he only issue" over which they have jurisdiction, *i.e.*, "whether a particular state enactment is subject to the provisions of the Voting Rights Act, and therefore must be submitted for approval before enforcement." *Allen v. State Bd. of Elections*, 393 U.S. 544, 558-59 (1969); *accord Lopez v. Monterey County*, 519 U.S. 9, 21 (1996); *Perkins v. Matthews*, 400 U.S. 379, 383 (1971).

[9] There will be no new plan to serve as a benchmark because, as noted, neither the court below nor the local "*Allen*" court could order new elections or a new plan.

[10] If mootness is found, vacatur under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), is not appropriate in this unique context.

II. THE DISTRICT COURT DID NOT RULE THAT SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

In its first *Bossier* opinion, this Court expressly left "open for another day the question whether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. As appellants sometimes admit, the district court expressly "*declined*" to resolve this legal question. U.S. J.S. 12 (emphasis added). It did so because it was unnecessary to its decision since it had made the *factual* finding that there was no evidence " 'that the Board enacted the [redistricting] plan with some non-retrogressive, but nevertheless discriminatory, "purpose." ' " App. 3a n.2 (quoting *Bossier I*, App. 46a).

First, the lower court established that it was fully aware that the Court had "le[ft] for another day the question" whether § 5 prohibits actions taken with non-retrogressive

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Munsingwear provides that, in certain circumstances, the judgment in a moot case should be vacated when this "extraordinary remedy" is necessary to relieve the parties of the collateral consequences of the judgment below *and* the losing party was unable to obtain appellate review. *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 26 (1994). Because no collateral consequences will flow from the decision of the lower court, the basic rationale of the *Munsingwear* doctrine has no application here. In addition to the fact that the 1990s plan will never again be used, the lower court's judgment will have no preclusive effect in future cases. Collateral estoppel cannot be offensively employed against the United States, and the decision of the district court in this case is not binding precedent for other courts. *United States v. Mendoza*, 464 U.S. 154, 160-61 (1984); *In re Korean Air Lines Disaster*, 829 F.2d 1171, 1176 (D.C. Cir. 1987), *aff'd sub nom. Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122 (1989). Furthermore, appellants could have preserved the justiciability of the case by seeking a stay pending appeal, but failed to do so. *Cf. Lopez v. Monterey County*, 516 U.S. 1104 (1996). It is their "burden, as the party seeking relief . . . to demonstrate not merely equivalent responsibility for the mootness, but equitable entitlement to the extraordinary remedy of vacatur." *U.S. Bancorp*, 513 U.S. at 26. It is appellants' own fault that they are unable to obtain appellate review because they slept on their rights. *Id.* at 24-26.

discriminatory intent. App. 3a. It then "decline[d]" to "answer the question the Court left for another day" because "the *record will not support* a conclusion that extends beyond the presence or absence of retrogressive intent." App. 3a (emphasis added). While the court stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose[,]' " it found that "those imagined facts are *not present here*." App. 3a-4a (emphasis added).

Thus, the district court plainly stated that resolution of the question whether § 5 prohibits a discriminatory, but non-retrogressive, purpose was unnecessary to decide this case because the facts supporting any such a discriminatory purpose were "not present here." It did not hold, as appellants maintain, that if such discriminatory purpose were "present here," the Board would nonetheless be entitled to pre-clearance under § 5 because that statute proscribes only "retrogressive" intent.

The rest of the court's analysis further confirms that it was analyzing the question of "non-retrogressive, but nevertheless discriminatory, 'purpose.' " First, the court plainly stated that, as it had already ruled in *Bossier I*, the Board had the "difficult[ ] . . . burden to prove the *absence* of *discriminatory* intent." App. 5a (first emphasis in original, second emphasis added). Next, the court analyzed the Board's reasons for adopting the Police Jury plan *in preference to the NAACP Plan*, not whether the Board had adopted the Police Jury plan for the purpose of putting minorities in a worse position than they enjoyed under the Board's 1980s redistricting plan. Thus, it squarely held that "the Board's resort to the pre-cleared Jury plan (which it mistakenly thought would easily be pre-cleared) and its focus on the fact that the Jury plan would not require precinct splitting, while the NAACP plan would, were 'legitimate, nondiscriminatory, motives.' " App. 5a. Again, then, the court was holding that the Board's "motives" for adopting the Jury plan in preference to the NAACP plan were "legitimate [and] non-discriminatory" because the Police Jury plan better furthered the race-neutral

policy of preserving precincts than the NAACP plan. Comparing the relative virtues of the Police Jury plan and the maximizing alternative proposed by the NAACP makes no sense if the court were analyzing only whether the Board's purpose was to cause retrogression compared to the *existing* plan. *See supra* pp. 7-8. Rather, this is classic "discriminatory purpose" analysis used in all *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977), and employment cases – *i.e.*, whether the minority applicant (or integrative alternative) was rejected for racial reasons or for "legitimate, nondiscriminatory reasons." *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 576 n.8 (1978).

Similarly, when the court analyzed the impact of the proposed plan under *Arlington Heights* and this Court's remand, the district court did not look only at "whether the Jury plan bears more heavily on blacks than the pre-existing plan." App. 5a. Rather, after disposing of private appellants' argument that the Jury plan had such a retrogressive effect, the court analyzed the *other* "allegedly dilutive impacts of the Jury plan" that appellant had offered "in support of its *discriminatory* intent argument." App. 6a (emphasis added). Of course, as the district court was well aware, this Court in *Bossier I* had used the term "dilutive impact[ ]" to denote a situation where a jurisdiction chooses a plan that "dilut[es]" black votes as compared to a "reasonable alternative voting . . . benchmark" and in contradistinction to a plan which had a "retrogressive 'effect.' " App. 37a. *See also* App. 10a-11a (Silberman, J., concurring). Thus, as instructed by this Court on remand, the district court was analyzing whether the choice of the allegedly "dilutive" alternative reflected a "discriminatory intent."

In this regard, the court found that the Board's plan could have reflected an impermissible purpose if it had "deliberately attempted to break up voting blocks before they could be established or otherwise to divide and conquer the black vote" by, for example, "fail[ing] to respect communities of interest and cutting across attendance boundaries." App. 6a. In this case, however, it found "an absence of such evidence in this record" and thus the discriminatory purpose assertion

to be "too theoretical, and too attenuated, to be probative." App. 6a. Examining such evidence of "fragmentation" is standard analysis in determining whether a jurisdiction was acting with discriminatory purpose. *See Johnson v. De Grandy*, 512 U.S. 997, 1015 (1994). Finally, the district court's opinion clearly stated that it was adhering to the same "method of analysis" as its "earlier" decision. App. 5a. The earlier decision plainly focused exclusively on whether the NAACP plan was rejected for impermissible racial reasons, but did not focus on retrogressive intent. App. 105a-114a.[11]

To be sure, the majority opinion adverts on several occasions to the Board's "retrogressive intent." App. 6a-7a. In context, however, this should not be read as indicating that the district court somehow had made *sub silentio* the legal determination that *only* retrogressive intent violates the purpose prong of § 5. Rather, these statements must be read in conjunction with the district court's threshold decision that there was no *evidence* of "non-retrogressive, but nonetheless discriminatory, purpose," App. 3a, and its incorporation of its prior findings that the Board's "change was undertaken without a discriminatory purpose." App. 105a. Given the absence of such discriminatory purpose evidence, the court below quite naturally sometimes phrased its conclusions in terms of retrogressive intent. Since, in this opinion, the court had

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[11] The concurring opinion emphasized in this regard that the court was *again* analyzing whether " 'the Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts.' " App. 9a (quoting App. 113a.). It noted that the court had both considered "dilutive impact" and applied the *Arlington Heights* framework in its first opinion – contrary to appellants' representation to this Court in the first *Bossier* appeal. App. 10a. The concurrence then affirmatively stated that it was engaging in such analysis again, while adding only that it was "now" dealing expressly with the Board's compliance with the outstanding school desegregation decree. App. 11a. Thus, the concurrence further confirms that the district court's opinion was simply fleshing out its first discriminatory purpose analysis, and was not substituting some new legal standard that focused exclusively on retrogressive intent.

already found that rejection of the NAACP plan was done pursuant to "legitimate, non-discriminatory motives," it did not need to reiterate that finding when it was dealing with each of the separate pieces of the *Arlington Heights* evidence. This is particularly true since, when considering each of the *Arlington Heights* factors, it incorporated by reference the court's earlier decision – in which it plainly did find that the plan was not motivated by discriminatory intent. *See* App. 6a-7a. Finally, as noted, the court often stated its conclusions in terms of "discriminatory" purpose, not "retrogressive" purpose. App. 5a; App. 6a (appellants had failed "to rebut the non-discriminatory reasons advanced by the Board" for adopting its plan).[12]

In short, even if the court had not expressly refused to resolve the legal question of § 5's scope, it is quite implausible that it would have resolved the legal issue that this Court made clear was important and unsettled without discussing in any way the reasons for adopting this position. In any event, if the district court did conclude that § 5 reaches only retrogressive intent, this is a correct interpretation of that statute.

III. SECTION 5 REACHES ONLY RETROGRESSIVE INTENT.

As in *Bossier I*, appellants advance an interpretation of § 5 that studiously and necessarily avoids the statute's plain language and this Court's consistent interpretation of that language, as well as the statute's unique structure and inherently "limited substantive goal." *Bush*, 517 U.S. at 982.

First, appellants' contention that § 5 prohibits a non-retrogressive purpose is irreconcilable with the statute's plain language. Section 5 provides in pertinent part that a covered jurisdiction is entitled to a declaratory judgment preclearing a proposed voting change where the practice at issue "does not

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[12] Similarly, while the court did say that the Board's action reflected a "determination to maintain the status quo," it is unclear whether the *status quo* referred to was the previously enacted Police Jury plan or the Board's own 1980s redistricting plan. App. 7a.

have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " 42 U.S.C. § 1973c. Under the statute, then, preclearance will be denied if a proposed change has either (1) the "purpose . . . of denying or abridging the right to vote on account of race or color" or (2) "the effect of denying or abridging the right to vote on account of race or color." It is firmly established and undisputed that a proposed change has the "effect of denying or abridging the right to vote" only if it has retrogressive effect on minority voters.[13] Thus, a jurisdiction has the "purpose . . . of denying or abridging the right to vote" only if its purpose is to retrogress.

A contrary conclusion can only be reached if one assumes that the phrase "denying or abridging the right to vote on account of race or color" has a different meaning as it relates to "purpose" and "effect." Such an interpretation would be absurd, as no principle of common usage, grammar, or logic would suggest a solitary phrase modifying two objects in the same sentence could have a different meaning as to each noun. Not surprisingly, appellants have not cited a single case where this Court has endorsed such a counterintuitive and anomalous method of construing a statute. If the phrase "abridging or denying the right to vote" refers to retrogression as it relates to the term "effect," it inexorably follows that it must have the same meaning as applies to the term "purpose."[14]

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[13] *See, e.g., Bossier I*, App. 46a ("[W]e have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one."); *Beer*, 425 U.S. at 141; *City of Lockhart v. United States*, 460 U.S. 125, 134 (1983); *Shaw v. Reno*, 509 U.S. 630, 654 (1993) ("*Shaw I*"); *Holder v. Hall*, 512 U.S. 874, 883 (1994); *Miller v. Johnson*, 515 U.S. 900, 926 (1995) (" '[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities. . . . ' ") (quoting *Beer*, 425 U.S. at 141); *Bush*, 517 U.S. at 982-83; *Abrams*, 521 U.S. at 97.

[14] *See, e.g., BankAmerica Corp. v. United States*, 462 U.S. 122, 129 (1983) ("[W]e reject as unreasonable the contention that Congress intended the phrase 'other than' to mean one thing when applied to 'banks' and

Appellants simply ignore this dispositive point and make no attempt to explain how "denying or abridging" could possibly dramatically shift meanings within the same sentence. In light of this implicit concession that there is no rational construction of § 5's actual language which reaches a purpose other than retrogression (at least absent reversal of the Court's precedent on retrogressive effect – which no one seeks), the Court's inquiry on this issue is complete. For, "[w]hen the words of a statute are unambiguous, then this first canon is also the last: 'judicial inquiry is complete.' " *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Reuben v. United States*, 449 U.S. 424, 430 (1981)). *See also Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) ("Our inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent.") (internal quotations omitted).[15]

Thus, appellants are reduced to arguing that, in contexts *other than Section 5*, § 5's language could encompass a discriminatory, albeit nonretrogressive, purpose. Specifically, appellants' central theme is that under the Constitution and § 2, a jurisdiction may dilute minority voting strength without putting minorities in a worse position than they previously enjoyed and thus a jurisdiction may have a purpose to dilute minority voting strength without intending to place minorities in a worse position. U.S. Br. 22-23; A-I Br. 26. Therefore, the

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another thing as applied to 'common carriers,' where the phrase 'other than' modifies both words in the same clause."); *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980).

[15] While the Voting Rights Act's legislative history is irrelevant for this reason, we nevertheless note that there is nothing in that history suggesting the absurd English usage appellants desire. So far as we can discern or appellants argue, nothing in the 1982 legislative history suggests that the phrase, "denying or abridging" changes meaning when that phrase modifies "purpose" or otherwise indicates that there was some fundamental disconnect between "purpose" and "effect" in § 5. To the contrary, the legislative history treats purpose and effect interchangeably, in the sense that it uses the same adjective to describe their scope. *See, e.g.*, S. Rep. No. 417, 97th Cong., 2d Sess. 18 (1982).

argument goes, a jurisdiction may have the "purpose . . . of abridging the right to vote" under § 5 even if there is no intent to increase discrimination against minorities.

Even if this assertion were not contrary to the plain language of § 5, the attempt to analogize vote dilution under the Constitution to § 5 dilution ignores the fact that, as the Court has often noted, dilution is necessarily a *relative* concept.[16] Accordingly, the dilution concepts developed in the context of constitutional and § 2 lawsuits to beneficially *alter existing* electoral practices cannot be transferred to the inherently different context of § 5, which is intended to "freez[e] election procedures" against harmful *changes* to that system. *Miller v. Johnson*, 515 U.S. 900, 926 (1995) (internal quotations omitted). In the context of § 2 or constitutional challenges to alter existing systems, dilution necessarily requires a plaintiff to "postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice." *Bossier I*, App. 37a. *See also Holder v. Hall*, 512 U.S. 874, 881 (1994) (plurality); *id.* at 950-51 (Blackmun, J., dissenting). The argument is that the plan dilutes minority voting strength compared to the hypothesized alternative: a single-member districting plan compared to an at-large scheme or a potential single-member redistricting plan compared to the one adopted. *See Holder*, 512 U.S. at 880; *Thornburg v. Gingles*, 478 U.S. 30, 88 (1986); *Rogers v. Lodge*, 458 U.S. 613, 616 (1982). If the existing plan was deliberately conceived or maintained in order to achieve that dilutive result, it is unconstitutional, but may violate § 2 even if that dilutive harm is unintended. *City of Mobile v. Bolden*, 446 U.S. 55, 62-63 (1980); *Gingles*, 478 U.S. at 44.

The benchmark for measuring whether a minority group's voting strength is relatively diluted under § 5 is entirely

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[16] *See, e.g., Bossier I*, App. 37a. ("[T]he very concept of vote dilution implies – and, indeed, necessitates – the existence of an 'undiluted' practice against which the fact of dilution may be measured."); *Holder*, 512 U.S. at 880 (" 'The phrase vote dilution itself suggests a norm with respect to which the fact of dilution may be ascertained.' ") (quoting *Gingles*, 478 U.S. at 88) (O'Connor, J., concurring in judgment).

different, and necessarily so. Dilutive effect is not assessed by a comparison of the proposed change to a hypothetical "reasonable alternative," but by a comparison to the existing system now being changed in the manner that triggers § 5. Because § 5 deals only with *changes* to parts of an existing voting system, it is inherently not a weapon that can be used effectively to alter or *improve* an unchanged *status quo*. Deliberate maintenance of an at-large system for purely discriminatory reasons does not offend § 5 and cannot be remedied by that statute. *Beer*, 425 U.S. at 128. Moreover, the only § 5 *remedy* is to *deny* the proposed change and thus *restore* the *status quo ante*. Thus, § 5 is a purely *reactive* statute that is designed to "freez[e] election procedures" against *erosion*; *improvements* to the discriminatory *status quo* must occur through § 2 or constitutional challenges to that system. "Because § 5 focuses on 'free[zing] election procedures,' a plan has an impermissible 'effect' under § 5 only if it 'would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.' " *Bossier I*, App. 35a (quoting *Beer*, 425 U.S. at 141). Thus, a nonretrogressive change "can hardly have the 'effect' of *diluting* or *abridging* the right to vote on account of race within the meaning of § 5." *Beer*, 425 U.S. at 141 (emphasis added). Rather, a voting change "deni[es] or abridg[es] the right to vote" under § 5 only if it dilutes minorities' group voting strength compared to their " 'theretofore enjoyed voting rights.' " *City of Richmond v. United States*, 422 U.S. 358, 378 (1975) (quoting *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960)). This is an entirely different dilution inquiry than that required under § 2, even though the statutory language of the two sections is virtually identical. *See* 42 U.S.C. § 1973(a) (no voting procedure may "result in a denial or abridgement of the right . . . to vote on account of race or color. . . . "); *see* 128 Cong. Rec. 14292 (daily ed. June 18, 1982) (remarks of Sen. Kennedy).

In short, because of the "different evils" at which they are addressed, in asking whether a redistricting or at-large system has *actually* abridged or diluted minority voting strength, one gives an entirely different answer under § 5 than

would be given in a case involving a constitutional or § 2 challenge to such a system. *Bossier I*, App. 33a. Just as the standard for whether abridgment or dilution *exists* is different under § 5 than under the Constitution or § 2, so too is the standard for determining whether a local government *intended* for that abridgement or dilution to exist. A jurisdiction obviously cannot possess a purpose of diluting minority voting strength, as that concept is understood under § 5, unless it intends to dilute minority voting strength as that concept is understood under § 5. This does not mean, as appellants believe, that § 5 fails to proscribe a purpose to dilute minority voting strength. It simply means that dilution is measured by a different benchmark, *i.e.*, the existing system rather than any "reasonable alternative."

Appellants nevertheless assert that § 5 proscribes a purpose to deny or abridge the right to vote relative to another available alternative – such as the NAACP maximization plan here. While this is the test for abridgement and dilution under the Constitution and § 2, it is plainly not under § 5. Since the only harm proscribed by § 5 is less minority voting power than the *status quo ante*, a government cannot violate § 5 unless its purpose is to cause *that* harm. The fact that a jurisdiction's purpose is to cause the relative harm proscribed by the Constitution – less minority voting power than a reasonably available alternative – therefore affords no basis for finding a § 5 violation. Since § 5 is designed to insure against changes that make the *status quo* worse, the relevant question is not whether its purpose is to *improve* the *status quo ante* as much as a reasonably available alternative.

Thus, just as in *Bossier I*, appellants impermissibly attempt to "shift the focus of § 5 from nonretrogression to vote dilution, and to change the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." App. 37a-38a. The only difference here is that appellants seek to make the relevant § 5 question whether the *purpose* of a voting change is "vote dilution" relative to the "hypothetical, undiluted plan," rather than "nonretrogression." But since "purpose" and "effect" modify the same language in § 5, attempting to transfer the § 5 purpose inquiry to a different

benchmark is just as contrary to the plain language and overall structure of that statute.

In short, in light of both its structure and language, it is quite impossible to interpret § 5 to prohibit a nonretrogressive purpose so long as the statute does not prohibit a nonretrogressive effect. Recognizing this, although appellants cannot directly argue that *stare decisis* permits overruling *Beer* and its numerous progeny, they nevertheless advance arguments that are necessarily premised on the notion that § 5 prohibits discriminatory, albeit nonretrogressive, *effects* and that *Beer* was wrongly decided.

In their most obvious assault on *Beer*, appellants' principal submission is that § 5's central purpose is to prevent the implementation of any new voting practice that "perpetuates" or "maintains" an existing discriminatory system. U.S. Br. 22-24; A-I Br. 24. This assertion, of course, cannot be reconciled with the established principle that § 5 reaches only retrogressive effect and, indeed, precisely echoes the *dissenting* opinions' arguments in both *Beer* and *Lockhart*, the two cases initially establishing that principle. *Beer*, 425 U.S. at 151 (Marshall, J., dissenting); *City of Lockhart v. United States*, 460 U.S. 125, 145 (1983) (Marshall, J., concurring in part and dissenting in part). The Court in *Lockhart* expressly acknowledged that the new electoral system "may . . . *remain*[ ] *discriminatory*," but was "entitled to § 5 preclearance" because it "did not increase the degree of discrimination against blacks." *Lockhart*, 460 U.S. at 134 (emphasis added). Appellants are therefore flatly wrong in arguing that § 5's goal was to prevent new electoral systems from "remaining discriminatory," even if they did not "increase the degree of discrimination against [minorities]." More generally, since the voting procedures which § 5 intended to "freeze" were often intentionally discriminatory in 1965, § 5 necessarily contemplated and tolerated changes which perpetuated and froze that discriminatory *status quo*, until they were undone by § 2 and the Constitution. *Bossier I*, App. 34a; *Miller*, 515 U.S. at 926; *Georgia v. United States*, 411 U.S. 526, 538 (1973). It was for this reason that the Court rejected Justice

Marshall's argument that maintenance of the *status quo* offended § 5 and held that § 5 reached only changes with a retrogressive effect.[17] *See Lockhart*, 460 U.S. at 145; *Beer*, 425 U.S. at 141.

The fact that construing § 5 to reach only a retrogressive purpose would also tolerate changes which maintain the *status quo* thus provides no basis for rejecting that construction of the statute. Since § 5 authorizes changes that actually maintain the *status quo*, the fact that a change was intended to

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[17] Although *stare decisis* principles demand fidelity to *Beer* and *Lockhart*, we nonetheless note that those cases were entirely correct in concluding that § 5 did not in any way prohibit maintenance of the *status quo*. To the contrary, Congress explicitly authorized changes under which minority voting power was " 'not affected.' " *Beer*, 425 U.S. at 141 (quoting H.R. Rep. No. 94-196, at 60). Similarly, Justice Brennan emphasized that the "fundamental objective of § 5 [is] . . . the protection of *present* levels of voting effectiveness for the black population." *Richmond*, 422 U.S. at 388 (Brennan, J., dissenting) (emphasis added). The very fact that § 5 applies only to *changes* to the *status quo* demonstrates that it could not have been intended to outlaw *maintenance* of the *status quo*. There is no better way to perpetuate a discriminatory system than not changing anything – a result necessarily contemplated by § 5. In *Beer*, for example, the submitting jurisdiction's attempt to maintain two at-large seats was not prohibited by § 5, even if this was deliberately done to "cancel out or minimize" minority voting strength compared to what they would enjoy under a single-member system. *White v. Regester*, 412 U.S. 755, 765 (1973). *See Beer*, 425 U.S. at 138-39. Finally, appellants note correctly that Congress in 1965 and 1982 was concerned with " 'extraordinary stratagem[s]' " to discriminate against minorities beyond the discriminatory "tests and devices" outlawed by the "Act itself." U.S. Br. 23-24 (citing *South Carolina v. Katzenbach*, 383 U.S. 301, 335 (1966)). This self-evident point explains why § 5 presumptively suspends all voting procedures – in addition to the permanently suspended "tests and devices" outlawed "by the Act itself" – but it hardly says anything about the substantive standard that should be used to adjudicate whether those new voting practices violate § 5.

maintain the *status quo* cannot somehow suggest any illegality.[18]

Since the United States cannot reconcile its nonretrogressive purpose argument with *Beer's* holding on retrogressive effect, it argues instead that *Beer* was not actually engaging in an act of statutory *interpretation*. Rather, the *Beer* Court made a policy decision about the desirability of prohibiting discriminatory "effects" and substituted its policy judgment for that of Congress. Specifically, the United States argues that *Beer* artificially circumscribed the plain language of § 5's "effect" because it was concerned that voting rights laws which prohibited a "discriminatory effect" alone were quite troublesome, and could lead to proportional representation. U.S. Br. 29-31. It invites the Court to make a different policy decision than the *Beer* Court because all agree that a racially discriminatory *purpose* is always bad. But, of course, this Court is not free to use different methods of statutory construction depending on how desirable it believes congressional policy decisions to be. The Court cannot interpret "abridge" to mean one thing when modified by "purpose" because that creates an uncontroversial policy result, but to mean another thing when modified by "effect" because that creates a policy that the Court believes is disquieting. *Brogan v. United States,* 118 S. Ct. 805, 811-12 (1998) ("Courts may not create their own limitations on legislation, no matter how alluring the policy arguments for doing so. . . . "). Rather, the Court must

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[18] Similarly, the United States' assertion that the "plain language" of § 5 reaches changes with a nonretrogressive purpose is a frontal assault on *Beer* and the consistent decisions following it. The United States asserts that a "purpose . . . of . . . abridging the right to vote on account of race" includes intentionally diluting minority voting power. U.S. Br. 18. But, under *Beer*, "abridg[e]" means retrogression or, stated another way, it means only a dilution of minority voting power as compared to the present system, but not dilution relative to a "hypothetical, undiluted alternative." Just as a nonretrogressive change cannot have the "effect of diluting or abridging the right to vote on account of race" unless it diminishes minorities' current voting power, it cannot have the purpose of doing so unless it intends to diminish that existing power.

interpret the law pursuant to its language and in a manner that renders the "statutory scheme . . . coherent and consistent." *Robinson*, 519 U.S. at 340. Nor, of course, is there any hint in *Beer* that the Court was in any way concerned with the policy implications of interpreting "effect" broadly, much less that the Court failed to faithfully interpret the congressional statute because of these concerns.[19] This is hardly surprising since the consequence of interpreting the § 5 "effect" prong "broadly" would have simply imposed on covered jurisdictions the "results test" of amended § 2. This is presumably not a policy which unduly troubled the *Beer* Court, since the same Court had decided *White v. Regester*, 412 U.S. 755 (1973), from which the § 2 "results" test was derived.

The United States' final argument is that § 5 tracks the language of the Fifteenth Amendment, which prohibits intentional discrimination, and, for this and other reasons, § 5 simply must go "*as far as* the Constitution." U.S. Br. 24 (quoting *Bossier I*, App. 57a (Breyer, J., concurring))

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[19] Footnote 8 in *Beer*, to which the United States refers, simply reaffirms that there is no *constitutional right* to proportional representation and then notes, with seeming *approval*, that the redistricting plan gave black voters roughly proportional representation when compared to the *five* single-member seats which were properly the subject of § 5 scrutiny. *Beer*, 425 U.S. at 151 n.8; U.S. Br. 30. Moreover, contrary to the United States' assertion, the Court has never said that § 5 "imposes substantial 'federalism costs' " because a nonretrogressive "effect" test would invalidate constitutional practices. *Miller*, 515 U.S. at 926; U.S. Br. 31. Rather, those costs are created by requiring sovereign "conquered jurisdictions" to come to Washington, D.C. to disprove their presumed guilt – costs which exist regardless of how "effect" is interpreted and which have been noted by the Court *after* § 5 was interpreted to reach only *retrogressive* effect. *South Carolina v. Katzenbach*, 383 U.S. 301, 359 (1966) (Black, J., dissenting); *Miller*, 515 U.S. at 926. If troubling federalism costs were imposed by effects tests that prohibited constitutional actions, both § 2 and Title VII of the 1964 Civil Rights Act would impose such costs, but the Court has never suggested that those statutes impose the sort of federalism problems created by § 5, even though the latter reaches only *retrogressive* effect. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

(emphasis in original). This assertion is flatly wrong on a number of levels.

First, § 5's use of language similar to the Fifteenth Amendment clearly is not intended to incorporate the Fifteenth Amendment standard, for discriminatory purpose or otherwise. As reflected in the fact that *Section 2* also tracks the Fifteenth Amendment by prohibiting a "denial or abridgment of the right to vote on account of race," Congress did not intend by using that language to incorporate any sort of discriminatory purpose standard. *Cf.* U.S. Const., amend. XV. The legislative history goes out of its way to confirm this. "It is patently clearly [sic] that Congress has used the words 'on account of race or color' in the Act to mean 'with respect to' race or color, and not to connote any required purpose of racial discrimination." S. Rep. No. 417, 97th Cong., 2d Sess. 28 n.109 (1982) ("S. Rep.").

More to the point, in 1982, it seemed quite probable – if not definitively settled – that the Fifteenth Amendment did not reach any form of vote *dilution*, intentional or otherwise. Yet the 1982 Congress plainly did want to render dilution mechanisms – such as redistricting plans – subject to § 5 review. *See* U.S. Br. 23. The plurality in *Mobile*, which was the object of extraordinary focus by the 1982 Congress, seemingly held that the Fifteenth Amendment reached only abridgments of the "right to *vote*" – *i.e.*, access to the ballot – rather than dilution of a group's voting power by redistricting schemes and the like.[20] Thus, Congress could not have intended to incorporate the Fifteenth Amendment standard by using similar language, otherwise it would run the serious risk of limiting Section 5's coverage to the denial or abridgement of the right to cast a vote, rather than to dilution of group

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[20] *See Mobile*, 446 U.S. at 65 (plurality) ("Having found that Negroes in Mobile 'register and vote without hindrance,' " the Court concluded the Fifteenth Amendment had not been violated); *see id.* at 84 n.3 (Stevens, J., concurring in judgment); *Rogers*, 458 U.S. at 619 n.6 ("With respect to the Fifteenth Amendment, the [*Mobile*] plurality held that the Amendment prohibits only direct, purposefully discriminatory interference with the freedom of Negroes to vote.").

voting power. The Court has yet to resolve whether the Fifteenth Amendment does reach vote dilution. *Voinovich v. Quilter*, 507 U.S. 146, 159 (1993).

For the same reason, even if § 5 prohibits only a retrogressive purpose, it still goes "as far as" – indeed, beyond – the Fifteenth Amendment as currently understood. A redistricting plan which intentionally fragments black concentrations may not violate the Fifteenth Amendment (and the 1982 Congress had grave doubts that it could), while such a plan would violate § 5 if the fragmentation was designed to cause retrogression. Thus, whatever meaning is assigned to "purpose" under § 5, *either* one goes "as far as" – indeed, farther – than the Fifteenth Amendment, especially as understood by the 1982 Congress.

Moreover, while appellants assume that a prohibition of retrogressive purpose is necessarily a more "narrow" requirement than the discriminatory purpose prohibited by the Fifteenth Amendment, this is not so. For example, if, in 2001, a covered jurisdiction, for purely race-neutral reasons, decides to eliminate a black-majority district created in 1990 through a maximization plan, this would not violate either the Fifteenth or Fourteenth Amendments, but would constitute a proscribed retrogressive purpose under § 5. In short, while the standards are *different*, it is not possible to say that one is consistently "broader" than the other.

Consequently, even if there were some basis for concluding that § 5 must go as far as the Fifteenth Amendment, this is not an argument for interpreting it contrary to its plain language since if § 5 prohibits retrogressive purpose, it still goes farther than the Amendment it seeks to enforce. More generally, however, there is no basis for concluding that the Constitution – the Fourteenth or Fifteenth Amendment – is somehow silently incorporated into § 5 because there is very little congruence between the Constitution and § 5. Section 5 goes farther than the Constitution because it prohibits state laws solely on the basis of their effect, while the Constitution requires an invidious purpose. Section 5 also goes farther because it enjoins the operation of state law until the jurisdiction proves its innocence. On the other hand, § 5 goes less far

than the Constitution because it reaches only changes to voting systems and covers only certain jurisdictions. Since § 5 is both broader and narrower than the Constitution, there is no basis for assuming it was intended to be coextensive with the Constitution and nothing in the 1982 legislative history indicates any such intent to incorporate the Constitution's "purpose" standard into § 5.[21]

1. Appellants' assertion that the Court has previously resolved the question of whether § 5 reaches beyond retrogressive intent is obviously belied by the fact that the *Bossier I* Court expressly reserved this unsettled question. App. 45a-46a. Nor did either of the concurring opinions maintain that the Court's precedent required such a rule. App. 61a, 70a, 76a. Although appellants maintain that *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), somehow resolved this question, the Court's opinion never mentions the word "retrogression" or hints that there is any distinction between retrogressive and discriminatory purpose because that case simply did not present this issue. The question in *Pleasant Grove*,

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[21] It is well established that § 5, as originally enacted in 1965 and subsequently amended in 1982, enforces the Fifteenth Amendment. *See, e.g., Lopez v. Monterey County*, 119 S. Ct. 693, 697 (1999); *Lockhart*, 460 U.S. at 136-37 (Marshall, J., dissenting); *Allen*, 393 U.S. at 588-89 (Harlan, J., concurring in part and dissenting in part); *South Carolina*, 383 U.S. at 335. Contrary to the United States' assertion, nothing in the legislative history indicates that § 5 reaches "racially motivated voting changes" that violate the Constitution. U.S. Br. 23 n.8. The legislative history upon which they rely merely contains a congressional finding that the extraordinary preclearance procedures of § 5 remain necessary to " 'preserve the "limited and fragile" achievements of the Act and to promote further amelioration of voting discrimination.' " S. Rep., at 10 n.19 (quoting *City of Rome v. United States*, 446 U.S. 156, 172, 182 (1980) (noting that "Congress passed the Act under the authority accorded it by the Fifteenth Amendment.")). The fact that Congress was relying on its power under the Fifteenth (or Fourteenth) Amendment to impose the extraordinary procedural burdens of § 5 does not suggest that § 5's substantive standard is coextensive with the Constitution, any more than § 2 incorporates the Fourteenth Amendment's standards.

rather, was whether the "purpose and effect" proscribed by § 5 reaches only current purposes and effects or also includes future purposes and effects.[22] The answer to that question is in no way dependent upon whether § 5 prohibits a retrogressive purpose (or effect), or something more. Appellants apparently believe that any intent to do a future harm somehow cannot be a purpose to cause retrogressive harm. This is plainly untrue. As the Court explained, just as an annexation of land *currently* populated by whites alone could make minority voters worse off than they were prior to the annexation (*i.e.*, retrogression), so too could annexing land that it was anticipated would be populated by whites. *Pleasant Grove*, 479 U.S. at 467.

Indeed, the Court's reasoning was that since "Section 5 looks not only to the present *effects* of changes, but to their future *effects* as well. . . . *Likewise*, an impermissible *purpose* under Section 5 may relate to anticipated as well as present circumstances." *Id.* at 471 (emphasis added). Thus, *because* the § 5 effects prong prohibits a certain (future) harm, it follows that the purpose prong encompasses an intent to do that (future) harm. Here, by the same logic, since the effect prong *permits* a nonretrogressive "harm," the purpose prong does not encompass an intent to do that harm.

In any event, the district court's opinion faithfully tracked *Pleasant Grove's* distinction between future and

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[22] While it is true that the dissenting opinion, in passing, mentions that *Lockhart* required a showing of retrogressive intent, the dissent's repeated central complaint was that "discriminatory purpose within § 5 must relate to voting" and that "[w]here an annexation's effect on voting rights is purely hypothetical, an inference that the city acted with a motivation related to *voting* rights is insupportable." *Pleasant Grove*, 479 U.S. at 474, 476-77 (Powell, J., dissenting). The majority did not mention or disagree with the dissenting opinion's legal conclusion that § 5 reached only retrogressive intent, any more than it "rejected" the dissent's view that § 5 related only to *voting* discrimination or retrogressive *effect*. It simply disagreed that a future purpose or effect was inherently "hypothetical" or irrelevant to voting and thus beyond the scope of § 5.

present harm. Thus, the lower court found that § 5's purpose prong would have been violated if there had been any "corroborating evidence that the Board had deliberately attempted to break up voting blocks *before they could be established* or otherwise to divide and conquer the black vote." App. 6a (emphasis added). This almost precisely echoes *Pleasant Grove's* holding that the city had an "impermissible purpose of minimizing future black voting strength." *Pleasant Grove*, 479 U.S. at 471. Thus, whatever the rationale of *Pleasant Grove*, it is in no way inconsistent with the court below's reasoning or result.[23]

Likewise, the Court's decision in *City of Richmond* lends no support to appellants' interpretation of § 5. There, the Court *upheld* an annexation that severely "reduc[ed] the relative political strength of the minority race in the enlarged city as compared with what it was before the annexation" *notwithstanding* this undisputed *retrogressive* effect. 422 U.S. at 378.

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[23] The Court's summary affirmance in *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983), is also no help to appellants. That decision is entirely consistent with the opinion below since the primary flaw in *Busbee* was that the submitting jurisdiction had "split a cohesive black community in Districts 4 and 5," thus causing minor *retrogression* in District 4, albeit not in District 5. *Id.* at 498-99. Since a summary affirmance is precedent only for any ground upon which the case below can be decided, and one potential ground was that the redistricting plan had a retrogressive effect, *Busbee* is not precedent for the position that a nonretrogressive plan violates § 5 if it is motivated by an illicit, nonretrogressive purpose. *See, e.g., Mandel v. Bradley*, 432 U.S. 173, 176 (1977). Moreover, the court below considered and rejected the notion that the Board had split or "fragmented" any cohesive black community as in *Busbee*. App. 6a. In *Miller v. Johnson*, 515 U.S. 900 (1995), the Court *overturned* the Justice Department's finding of discriminatory purpose as inconsistent with *any* understanding of that term and thus, as in *Bossier I*, resolution of the sort of purpose proscribed by § 5 was "not necessary [to the Court's] decision." App. 45a (internal quotations omitted). The *Miller* Court's implicit assumption that § 5 reaches beyond retrogressive purpose is no more dispositive of this point than *Bossier I's* explicit assumption that it does not.

The Court then remanded the case to insure that the motivation behind the annexation was not to cause such obvious *retrogression* in black voting strength, but was done for "verifiable, legitimate reasons." *Id.* at 375 (internal quotations omitted). In doing so, the Court again equated "changes taken with the purpose of denying the vote on the grounds of race or color" with "despoil[ing] colored citizens, and only colored citizens, of their *theretofore enjoyed voting rights*.' " *Id.* at 378-79 (quoting *Gomillion*, 364 U.S. at 347) (emphasis added). Thus, *Richmond* merely holds that an indisputably retrogressive change, which might otherwise survive § 5 review, will be struck down if the motive in undertaking the annexation was to cause such retrogression, rather than to accomplish some "legitimate" goal. It in no way suggests that a nonretrogressive change may be invalidated if motivated by a nonretrogressive purpose. *Beer* itself expressly noted this obvious, dispositive difference:

> The *City of Richmond* case thus decided when a change with an *adverse impact* on *previous* Negro voting power met the "effect" standard of § 5. The present case, by contrast, involves a change with no such adverse impact upon the former voting power of Negroes.

Beer, 425 U.S. at 139 n.11.

Thus, while *Pleasant Grove* and *Richmond* confirm that § 5 disjunctively prohibits either an unlawful purpose *or* unlawful effect, neither suggests that the § 5 "purpose" proscribes something other than the proscribed retrogressive "effect."

In sum, § 5 prohibits only changes with a retrogressive purpose.[24] There is also no basis, as we presently explain, for

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[24] No deference is due to the Attorney General's contrary interpretation because such deference is possible " 'only . . . if Congress has not expressed its intent with respect to the question, and then only if the administrative interpretation is reasonable.' " *Bossier I*, App. 42a (quoting *Presley v. Etowah County Comm'n*, 502 U.S. 491, 508 (1992)). Here, the

denying preclearance in a § 5 proceeding to changes that *satisfy Section 5*, on the grounds that they violate the *Constitution*.

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statute's plain language directly resolves "the question" in a manner irreconcilable with the Attorney General's position, and the Court has declined to give deference in instances where the plain language was less definite than here. *See, e.g., Presley*, 502 U.S. at 508 (whether § 5 applies to changes in responsibilities of elected officials); *Holder*, 512 U.S. at 880 (plurality) (whether the phrase "standard, practice, or procedure" related to a change in the size of a governing authority). We further note that this Court has never adopted the Attorney General's reading of § 5 to override a contrary legal conclusion by the *Section 5 district court* – which is principally charged with administering the Act's preclearance mechanism – and there is no basis for doing so. This Court has made clear that it will not defer to an agency interpretation where the agency is "neither the sole nor the primary source of authority in such matters." *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 202 (1991). Here, "the declaratory judgment proceeding is the basic mechanism for preclearance established by the Act, [while] the provision for submission to the Attorney General merely gives the covered State a rapid method of rendering a new state election law enforceable." *McCain v. Lybrand*, 465 U.S. 236, 247 (1984) (internal quotation and citation omitted); *accord, e.g., Clark v. Roemer*, 500 U.S. 646, 655 (1991); *Morris v. Gressette*, 432 U.S. 491, 503 (1977). Since Congress vested the three-judge court with primary responsibility for determining the meaning of "purpose and effect" under § 5, no intelligible principle of construction would reject the correct interpretation of that Article III court in deference to an *erroneous*, albeit "reasonable," construction by the Attorney General. *See Crandon v. United States*, 494 U.S. 152, 177 (1990) (Scalia, J., concurring in the judgment) (no deference for the Attorney General's interpretation of a criminal statute, because the statute "is not administered [by the Justice Department] but by the courts"). This Court does not give deference to the Attorney General's *factual* conclusions in a § 5 case, but defers to the three-judge court absent clear error. The same rule should obtain with respect to the court's legal conclusions, particularly since the Attorney General herself has acknowledged that she is controlled by those decisions. *See* 28 C.F.R. § 51.56; 28 C.F.R. § 51.52(a) (Attorney General "make[s] the same determination that would have been made by the court in an action for a declaratory judgment under section 5."). Finally, no Justice Department guideline or statement considers, much less explains, how § 5 could treat

IV. SECTION 5 PRECLEARANCE MAY NOT BE DENIED BECAUSE A CHANGE VIOLATES THE CONSTITUTION.

A distinct question, raised by *dicta* in *Beer*, is whether § 5 courts (and the Attorney General) may withhold preclearance of a voting change that satisfies the nonretrogression purpose standard of Section 5 on the grounds that it violates the Constitution. If the Court is to address this question, it should rule that constitutional issues are not properly within the province of Section 5 courts or, at a minimum, that the *United States*, as it has previously acknowledged, bears the burden in a § 5 proceeding of proving that a change violates the Constitution.

As the Court noted in *Bossier I*, *dicta* in *Beer* suggested that a constitutional violation "constituted grounds for denial of preclearance under *Beer*." App. 41a. *Beer* did not purport to interpret the meaning of § 5's "purpose," much less to suggest that it had a different meaning than the retrogression it held was the standard for determining an "effect of . . . abridging." Nor did it in any way explain or articulate what constitutional standard it was referencing. The most plausible understanding is that *Beer* believed that a single-member redistricting scheme violated the Constitution only if it caused retrogression by taking away a minority's "*theretofore enjoyed* voting rights." *Richmond*, 422 U.S. at 378 (quoting *Gomillion*, 364 U.S. at 347). *See Mobile*, 446 U.S. at 69 n.14 ("A districting statute otherwise acceptable, may be invalid because it fences out a racial group so as to deprive them of their *pre-existing municipal vote*. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).") (plurality) (emphasis added). It is doubtful that *Beer's* reference to the constitutional standard connoted a racial purpose to dilute since it was hotly contested whether this was the constitutional standard (particularly in a voting

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"purpose" differently than "effect"; the enforcement guidelines simply *assume* such a difference exists.

rights context) when *Beer* was decided,[25] and such a conclusion is irreconcilable with other assertions in the opinion.[26]

But regardless of what *Beer* intended by its reference to the *constitutional* standard, the relevant point is that the *dicta* was not construing *Section 5*, much less what "purpose"

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[25] *Beer* was pre-*Washington v. Davis*, 426 U.S. 229 (1976). *See Beer*, 425 U.S. at 149 n.4 (Marshall, J., dissenting); *Mobile*, 446 U.S. at 62, 66 (plurality); *id.* at 85-86, 88-90 (Stevens, J., concurring); *id.* at 120 (Brennan, J., dissenting); S. Rep., at 19-26.

[26] The *Beer* Court said that the United States had not, and could not "rationally," allege a constitutional violation. *Beer*, 425 U.S. at 142 n.14. But the government had contended in the *Beer* lower court that "the district boundaries established by Plan II have the purpose of discriminating against black voters." *Beer v. United States*, 374 F. Supp. 363, 386-87 (D.D.C. 1974). And, as the lower court and dissenting opinion made clear, there was ample evidence making an assertion of discriminatory purpose, at the very least, "rational." *Id.*; *Beer*, 425 U.S. at 160-61 (Marshall, J., dissenting); *cf. Rogers*, 458 U.S. at 623-27. Thus, it seems clear that the *Beer* Court perceived a difference between allegations of invidious purpose, at least in the single-member context, and allegations of a constitutional violation. At a minimum, the *Beer* Court would not have assumed that the Constitution was violated if the jurisdiction failed to create a *black-majority district* for racial purposes. Prior to *Shaw I*, many believed that a jurisdiction's conceded use of race as a basis for line-drawing would not form the basis for a viable constitutional challenge absent a showing of *dilutive effect* on a group's voting power. *Shaw I*, 509 U.S. at 658-60 (White, J., dissenting); *United Jewish Org. v. Carey*, 430 U.S. 144, 165-67 (1977) (plurality). As noted, *Beer* found that a nonretrogressive reapportionment did not have a dilutive *effect*, and it was quite an unsettled proposition in 1976 that deliberate creation of districts where blacks constituted a minority was necessarily dilutive of black voting power. *Allen*, 393 U.S. at 586 (Harlan, J., concurring in part and dissenting in part); *Bossier I*, App. 52a (Thomas, J., concurring). Thus, the reason that New Orleans' deliberate creation of white majority districts in *Beer* did not "remotely approach" a constitutional violation is because such districts are dilutive only when compared to a "hypothetical" plan creating more black-majority districts and only if one accepted the then-disputed premise that majority districts are "better" for minorities than "influence" districts. *Allen*, 393 U.S. at 586 (Harlan, J., concurring in part and dissenting in part).

meant under that statute. To the contrary, *Beer* was at pains to emphasize that its construction of § 5 was entirely distinct from its understanding of constitutional norms:

> In evaluating this claim, it is important to note at the outset that the question is not one of constitutional law, but of statutory construction. A determination of when a legislative reapportionment has "the effect of denying or abridging the right to vote on account of race or color," must depend, therefore, upon the intent of Congress in enacting the Voting Rights Act and specifically § 5.

Beer, 425 U.S. at 140-41 (footnote omitted).

The upshot of the *Beer dicta*, then, is the unexceptional proposition that a reapportionment which satisfies § 5 may nonetheless violate the Constitution. Read in isolation, it is true, *Beer* suggests the more troubling proposal that the *Section 5 court* itself may adjudicate constitutional issues and withhold preclearance on that basis. This Court has subsequently explained, however, that the *Beer dicta* was not intended to suggest that a constitutional violation affords a basis for a Section 5 court to deny preclearance. In *Shaw I*, this Court ruled that the *Beer dicta* simply "declined to reach [the] question" of whether a "nonretrogressive" redistricting plan was, "for that reason, . . . immune from constitutional challenge." *Shaw I*, 509 U.S. at 654 (citing *Beer*, 425 U.S. at 142 n.14). *Shaw I* noted that other cases had established that "a reapportionment plan that satisfies § 5 still may be enjoined as unconstitutional," citing the provision of § 5 allowing a "*subsequent* action to enjoin enforcement" after the declaratory judgment has issued and *Allen's* ruling that "*after preclearance*, 'private parties may enjoin the enforcement of the new enactment . . . in *traditional suits* attacking its constitutionality.' " *Id.* (quoting *Allen*, 393 U.S. at 549-50) (emphasis added).[27]

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[27] Moreover, *Beer's* suggestion that a nonretrogressive plan may be denied preclearance if it violates the Constitution is inconsistent with *Lockhart's* ruling that a nonretrogressive plan "is *entitled* to § 5

Thus, as construed in *Shaw I*, *Beer's dicta* at most confirms the obvious point that a reapportionment plan which satisfies § 5 may still violate the Constitution and, as § 5's language itself states, may be enjoined in a *subsequent* constitutional challenge. Moreover, this result is the only one at all consistent with the express language of § 5. There is no basis under that statute for denying preclearance to a voting change in a § 5 proceeding if the voting change satisfies the substantive requirements of *Section 5*, regardless of whether it violates another federal law. The authority and jurisdiction of the three-judge court in the District of Columbia is strictly limited to issuing a declaratory judgment on whether the voting change has a "purpose [or] effect" forbidden by § 5. If the three-judge court issues a declaratory judgment that the Board's proposed redistricting plan does not have the retrogressive "purpose and effect" prohibited by § 5, the preemptive constraints of § 5 have been lifted and no federal law trumps the Board's plan. "Once a covered jurisdiction has complied with these preclearance requirements, § 5 provides no further remedy." *Lopez v. Monterey County*, 519 U.S. 9, 23 (1996). If the three-judge court decides to also issue an advisory opinion on the Constitution, this can be of no legal consequence because nothing in the Voting Rights Act makes such a constitutional determination a prerequisite to implementing the jurisdiction's voting changes and the three-judge court has no subject matter jurisdiction to rule on any constitutional violation.

Amending § 5 to add the requirement that a change satisfy the Constitution would also make nonsense of the language in § 5 allowing a subsequent suit to enjoin a precleared change, and would be an invitation to relitigation and inconsistent judgments. If Congress intended for the Section 5 court to make a constitutional determination *before* preclearance, it is doubtful it would have

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preclearance," without referencing any possible exception for an unconstitutional nonretrogressive plan. *Lockhart*, 460 U.S. at 134 (emphasis added).

expressly authorized a subsequent constitutional challenge. This would simply create the potential for inconsistent judgments and duplicative litigation.

This further confirms that Congress intended to limit the extraordinary burdens imposed upon sovereign jurisdictions by using § 5 to resolve only the manageable substantive question of whether there is dilution compared to the cognizable benchmark of the *existing* practice. Requiring a covered jurisdiction to also, in essence, sue itself under the Constitution and disprove the validity of hypothetical alternatives limited only by the imagination of Justice Department lawyers (and then perhaps litigate those same issues *again* in a defensive lawsuit in district court) would increase the already "substantial federalism costs" imposed by § 5. *Lopez v. Monterey County*, 119 S. Ct. 693, 703 (1999) (internal quotations omitted).[28]

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[28] For the third time, appellants rely on footnote 31 in the 1982 Senate Report to argue that the 1982 Congress *thought Beer* authorized a denial of preclearance if a reapportionment plan violated the Constitution and thus § 5 must be so interpreted. U.S. Br. 29 (citing S. Rep., at 12 n.31). The authors of the same Senate Report footnote, however, also *thought* that "the rule laid down in *Beer* governed *ameliorative* changes," rather than nonretrogressive ones, and that *Beer* invalidated voting plans which violated the *White v. Regester* "results standard" later incorporated into § 2. *See* S. Rep., at 12 n.31; *Lockhart*, 460 U.S. at 145 (Marshall, J., concurring in part and dissenting in part) (emphasis in original); *Bossier I*, App. 43a; 73a. This Court nonetheless ruled precisely to the contrary in both *Lockhart* and *Bossier I* because the proposed interpretation offered in the Senate Report footnote was contrary to the language and structure of § 5. *Bossier I*, App. 43a. The United States suggests that this appeal is different because the issue here "involves Congress's *approval* of . . . *Beer*." U.S. Br. 29 n.10. But the Senate Report footnote also *approved Beer's* purported incorporation of *White v. Regester* "results" and *Beer's* purported limitation to only ameliorative changes. This does not change the fact that, yet again, the Senate Report's "interpretation" is contrary to both the plain language of the statute and, for that matter, this Court's subsequent interpretation of *Beer* in *Shaw I*. Thus, this footnote can be given "great weight" only if the Court abandons both its longstanding principle that legislative history cannot affect plain statutory language and the principle that "it is the

Appellants nonetheless conclusorily assert that Congress simply could not have intended that the Attorney General blind her eyes to unconstitutional voting discrimination. U.S. Br. 22. Congress concededly did, however, bar the Attorney General from objecting to even a "clear violation" of § 2. *Bossier I*, App. 45a; App. 62a (Stevens, J., dissenting). Presumably the 1982 Congress was as concerned about a clear § 2 violation as it was about an ambiguous constitutional violation. This is particularly true since it thought that the amended § 2 standard was the correct *constitutional* standard (and the established one prior to *Mobile*) and because it thought that "unintended" deprivations of minority voting rights were just as nefarious as actions taken with a discriminatory "intent." S. Rep., at 19-26, 30, 36-37.

As this reflects, there is nothing "implausible" about Congress determining that a violation of *other* voting rights guarantees affords no basis for objecting under § 5. U.S. Br. 20. The Attorney General's preclearance of changes is not tantamount to an "endorsement"; it is simply an acknowledgement of the "limited substantive" scope of § 5. *Bush*, 517 U.S. at 982. The fact that the Attorney General and this Court were forced to preclear the two at-large seats retained in the *Beer* reapportionment plan, even if they were retained for blatantly discriminatory reasons, hardly suggests that the Attorney General or this Court "tolerated" such an invidious motive. *Beer*, 425 U.S. at 138. The same is true of a single-member redistricting plan that, for whatever reason, simply retains the racial percentages contained in the prior redistricting plan. Granting preclearance simply recognizes the fact that practices which violate laws other than § 5 should be challenged under the laws which render them illegal.

At the same time, having local district courts, rather than the District of Columbia Section 5 court, adjudicate constitutional violations of proposed voting changes would not place

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function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means." *Pierce v. Underwood*, 487 U.S. 552, 566 (1988); *see* U.S. Br. 29 n.10.

the United States or minority plaintiffs at any procedural disadvantage. For, as the United States itself acknowledged in *Bossier I*, if *Beer* is construed as injecting unconstitutional dilution claims into § 5 proceedings, the language of that opinion shows that "the burden to show dilution as a bar to preclearance remains with the *Attorney General*." U.S. Br. in *Bossier I* at 43 (emphasis added). Specifically, the United States brief pointed to the passage in *Beer* where "the Court stated that '[t]he *United States has made no claim* that [the disputed plan] suffers from any such [constitutional] disability, nor could it rationally do so.' " *Id.* (quoting 425 U.S. at 142 n.14) (emphasis added by U.S. Br.) (second bracket added).[29] The concession that it has the burden is well-taken because (in addition to the *Beer* language) the burden on submitting jurisdictions under § 5 is only to show that their change is "free of the purpose and effect" proscribed by *Section 5. South Carolina v. Katzenbach*, 383 U.S. 301, 355 (1966). There is no suggestion that the jurisdiction must also prove itself innocent of other potential violations.

Thus, if the Constitution is to be injected into § 5 litigation, this requires at most that the jurisdiction disprove a violation of § 5 – show the absence of a retrogressive purpose and effect – while the United States would have to demonstrate a constitutional violation. Under the Court's well-established precedent, this means, in redistricting cases where "the legislature always is *aware* of race," *Shaw I*, 509 U.S. at 646 (emphasis in original), that the United States' burden is to show "that race was the predominant factor motivating the legislature's decision." *Miller*, 515 U.S. at 916. Outside the redistricting context, it must show that race was a "motivating factor" unless the jurisdiction shows that it would have made the same decision without considering race. *Arlington*

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[29] Since the United States in *Bossier I* attempted to show that *Beer* authorized § 2, as well as constitutional, challenges, it conceded that *Beer* also placed the burden on the Attorney General in § 2 challenges it thought could be brought in § 5 proceedings.

Heights, 429 U.S. at 270-71 n.21; *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

Since the United States concededly would have the burden to show a constitutional violation regardless of whether the litigation is in the District of Columbia Section 5 court or a traditional district court, this is an additional reason not to stretch § 5 beyond its language to expand the Section 5 court's jurisdiction. Indeed, this Court has frequently noted that local district courts are best situated to resolve constitutional voting rights challenges since analysis of that evidence requires an "intensely local appraisal." *White v. Regester*, 412 U.S. at 769-70. Thus, interpreting § 5 as not encompassing constitutional issues would have no cognizable effect on the judiciary's ability to resolve those constitutional claims or in any way allow any invidious purpose to go unremedied.[30]

Equally important, a nonretrogression standard in 1999, *standing alone*, is an extraordinarily muscular prophylactic barrier against any effort to improperly dilute minority voting strength. Each covered § 5 jurisdiction has already had at least two, and usually three, redistricting plans affirmatively found to be free of any discriminatory purpose or effect in the 1970s, 80s and 90s. *See* 42 U.S.C. § 1973c (some jurisdictions covered for practices in effect "on November 1, 1972"). In the 1990s, such preclearance was forthcoming from the

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[30] The United States makes the puzzling assertion that, after a traditional district court has struck down an existing voting practice under the Fifteenth Amendment because of discriminatory purpose, the Attorney General would somehow be forced to preclear a new practice under § 5 that had precisely the same discriminatory purpose and effect. U.S. Br. 22. But, of course, a district court exercising its remedial jurisdiction could not possibly allow the offending jurisdiction to "cure" its adjudged violation by substituting precisely the same plan for precisely the same unconstitutional motive. *See, e.g., Connor v. Finch*, 431 U.S. 407, 414-15 (1977); *Abrams*, 521 U.S. at 84-86. Thus, no such discriminatory substitute plan would ever be eligible to be submitted for preclearance. *Id.* The question here, however, is simply whether § 5 contemplates that these Fifteenth Amendment questions will be decided in the first instance by these district courts or by the Justice Department. *See infra* pp. 41-42.

Justice Department only if it found compliance with § 2 and if it maximized minority districts to the extent arguably permitted (and often beyond what was permitted) by the constitutional guarantees for nonminority citizens. *See Bossier I*, App. 32a; *Shaw v. Hunt*; 517 U.S. 899, 902 (1996) ("*Shaw II*"); *Miller*, 515 U.S. at 917. Thus, in striking contrast to the 1970s, the retrogression benchmark in the 2000 redistricting cycle is set extraordinarily high. Simply maintaining that minority maximization *status quo* under a nonretrogression principle will not perpetuate any *discriminatory* redistricting plans. It will maintain, rather, a system which maximizes minority voting strength to the extent constitutionally permissible. It is extraordinarily implausible that a submitting jurisdiction, except in the rarest of cases, could avoid retrogressing from the race-conscious redistricting required in the 1990s and still unconstitutionally dilute minority voting strength. As noted, those rare cases can be swiftly adjudicated in local district courts pursuant to the same evidentiary standards as would be employed in the three-judge court.

On the other hand, injecting constitutional issues into § 5 adjudication would create an unworkable *administrative* system for § 5. First, there is simply no place in the traditional § 5 administrative scheme for the shifting burdens that all agree are necessary if the Constitution is to be part of § 5 analysis. The Justice Department itself has forthrightly acknowledged that it cannot reasonably administer a scheme where the Attorney General has the burden of proving a violation to *herself*: "Unlike court proceedings, administrative review under § 5 – which is by statute limited to 60 days upon receipt of all necessary information – does not include the kind of hearing procedures that provide for the full presentation of evidence and rebuttal evidence by contesting parties and others interested in the proceedings." Revision of Procedure for the Administration of Section 5 of the Voting Rights Act of 1965, 52 Fed. Reg. 487 (Jan. 6, 1987).

Perhaps more troubling, in adjudicating this constitutional issue, the Justice Department takes the extraordinary view that it is perfectly appropriate to find that the submitting jurisdiction acted with a "discriminatory purpose" even if it

"did not take race into account in any way." App. 102a n.12. Thus, as the Department candidly argued to this Court in *Miller* and *Bossier I*, even if there is not a scintilla of evidence that a jurisdiction has departed from the traditional redistricting principles it would have used in a colorblind world, a discriminatory purpose finding can nonetheless be premised solely on the existence of racial bloc voting and a history of discrimination – phenomena that exist in many covered jurisdictions, which the submitting jurisdiction cannot change and which will exist regardless of which redistricting plan is chosen. U.S. Br. in *Bossier I* at 17-19; U.S. Br. in *Miller* at 32-33. Indeed, as the objection letter in this case makes clear, the Justice Department believes that a jurisdiction must maximize minority voting strength unless there is a compelling reason which *necessarily* forecloses the maximization alternative. *See* App. 235a (Board is "not free to adopt a plan that *unnecessarily* limits the opportunity for minority voters to elect the candidates of choice."). Thus, if granted authority over constitutional issues, the Justice Department will impermissibly exercise this unreviewable authority to find that the submitting jurisdiction acted with discriminatory purpose simply because, as here and in the *Shaw* gerrymander cases, it is prevented from maximizing by perfectly valid state laws and/or traditional districting principles. *Morris v. Gressette*, 342 U.S. 491 (1977). The necessary result of this empowerment is to again plunge this Court and covered jurisdictions into another decade-long cycle of litigation concerning whether the Justice Department's maximization policies have coerced jurisdictions to engage in an unconstitutional gerrymander against nonminorities. As this Court has previously noted, these Justice Department departures from neutral enforcement of accepted nondiscrimination principles raise serious constitutional concerns about § 5 itself. *Miller*, 515 U.S. at 926-27.

In sum, (1) § 5's retrogressive purpose standard, standing alone, is an extraordinary bulwark against unconstitutional

minority vote dilution; (2) judicial remedies are readily available to strike down any voting changes with a discriminatory purpose; and (3) there are compelling policy reasons not to transfer adjudication of this constitutional issue from neutral magistrates to an unreviewable bureaucracy which cannot administer a burden shift and which consistently applies erroneous (and unconstitutional) legal standards to adjudicate the Constitution. At most, even if appellants' reading of *Beer* is accepted, the question on remand should be whether the defendants have carried *their* burden of proving that the Board's redistricting plan violated the Constitution.

V. THE DISTRICT COURT'S DISCRIMINATORY PURPOSE FINDINGS ARE NOT PROPERLY BEFORE THIS COURT AND ARE NOT CLEARLY ERRONEOUS.

The only question presented by appellants to this Court is the purely legal issue of whether the district court misconstrued § 5 by concluding that it reached only retrogressive intent. *See* U.S. J.S. at I; A-I J.S. at i. Unlike the first appeal, neither appellant raised any question as to whether the district court improperly found no discriminatory purpose in this case by misapplying the *Arlington Heights* factors or making clearly erroneous factual findings. Thus, whether the Board had a discriminatory purpose is simply not before the Court, and the Court has no basis for reversing any findings the lower court made on that issue. *Yee v. City of Escondido*, 505 U.S. 519, 537 (1992); Sup. Ct. R. 14.1(a); Sup. Ct. R. 18.3. Rather, if the Court finds that the lower court erred by failing to examine the discriminatory purpose issue, it must remand so the lower court may apply the proper legal standard to the facts. Yet, without any explanation, both appellants devote roughly half their briefs to this nonexistent, fact-bound issue.

Although this issue is entirely irrelevant, we will nonetheless briefly explain why the district court's findings on discriminatory purpose are not "clearly erroneous" and therefore may not be set aside. *Pullman-Standard, Div. of Pullman,*

Inc. v. Swint, 456 U.S. 273, 287 (1982).[31] The Board was offered a choice between two alternative redistricting plans. As the undisputed facts establish, one plan had been, precleared by the Justice Department the previous year, was supported by the black member of the Police Jury's Reapportionment Committee, kept intact every black population concentration, enhanced minority voting strength and clearly complied with state law and traditional districting principles, such as compactness and maintaining the integrity of municipal, district and precinct boundaries. J.A. 508; J.A. 504. The other alternative concededly constituted a facial violation of state law which rendered the plan "null and void," required more than doubling the number of existing precincts, split every municipal boundary in the Parish, grossly departed from the Police Jury districts and the "best" version was subsequently condemned by a federal court as "resembl[ing] an octopus, as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population. . . . " J.A. 509-10; J.A. 51. *See infra* pp. 46-47.

The short, and dispositive, explanation for why the district court found that the Board had a completely legitimate, nondiscriminatory reason for rejecting the proposed NAACP alternative is that this alternative (or even any variant

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[31] Although appellants claim that "general" findings of fact are subject to heightened scrutiny, there is no finding more general than a determination of "discriminatory intent," and the Court has held that such a finding is subject to Sup. Ct. R. 52. *Pullman*, 456 U.S. at 287. Indeed, the Court has emphasized that factual findings " 'as to the design, motive and intent with which men act' [are] peculiarly factual issues for the trier of fact." *Id.* at 288 (quoting *United States v. Yellow Cab Co.*, 338 U.S. 338, 341 (1949)). *See also Pleasant Grove*, 479 U.S. at 469 (1987) (holding that under § 5, "findings, both as to the purpose [of adopting a voting change] and with respect to the weight of evidence regarding the purpose of the [changes] at issue, are findings of fact that we must accept unless clearly erroneous"); *Rogers*, 458 U.S. at 623.

thereof)[32] facially violated a state law that was impossible to evade. The Board was required to use the precincts created by the Police Jury (and used by the Police Jury for its districts) as the "building blocks" for the Board's districts. Louisiana law is quite unequivocal on this point: "The boundaries of any election district for a new apportionment plan from which members of a Board are elected shall contain whole precincts established by the parish governing authority [i.e., the Police Jury]. . . . " J.A. 376-77. Any failure to abide by this mandatory requirement would render the Board's plan "null and void."[33] J.A. 377. At the same time, the local NAACP claimed that the Voting Rights Act required the adoption of a plan with two black majority districts, even though this concededly violated state law because a black majority district could not be created without splitting numerous precincts. App. 195a; J.A. 195-96. Confronted with this allegedly insoluble conflict between state and federal law, the Board chose the one plan it knew complied with *both* sets of laws: the Police Jury plan which the Justice Department had precleared just the year before. Because this "guaranteed preclearance" solved the federal law problem, it rendered the Police Jury plan markedly superior to any other plan that complied with state law (since any plan that had a black majority district, and thus also had a chance at preclearance, violated state law by splitting precincts.)

Appellants contend that the Police Jury, as opposed to the Board, had the authority to split precincts and that such splits

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[32] Two "Cooper" plans were formulated by intervenors after the Board had adopted its plan, and thus are clearly irrelevant. In any event, even the "best" of these plans splits all but one of the Parish's towns, results in *31 precinct splits*, and is not compact. J.A. 421-22, 440-54, 512.

[33] In an attempt to confuse this issue, appellants state that the Police Jury had modified the precincts used in the 1980s when it adopted its 1991 redistricting plan. No state law prohibits the Police Jury from changing its prior precincts to reflect population shifts and conform with its new districts, but once it has done so, the Board must use those precincts to build its districts. J.A. 389.

are both "legal and common." U.S. Br. 46; A-I Br. 39. This is extraordinarily disingenuous. For, *prior to December 31, 1992*, the Police Jury, just like the Board, was legally prohibited from altering a single precinct line. J.A. 389. But, under state law, the Board was required to redistrict *prior to December 31, 1992*. J.A. 88-89, 406-07. Thus, during the time that the Board was required to redistrict, lest the plan be "null and void," any splitting of precincts by it or the Police Jury would render the plan "null and void." It was therefore, *impossible* for *either* the Board *or* the Police Jury to sanction any precinct splits in the Board's redistricting plan during the period when the Board could lawfully redistrict.[34] This is hardly a coincidence, but was the manner in which state law ensured that all school boards used the Police Jury precincts as "building blocks" for their districts. Of course, *after* both the Board and the Police Jury had built their districts with the same precincts, there was no problem with the Police Jury *consolidating* those precincts *within* district lines to save money by having *fewer* precincts. J.A. 377. But, contrary to what the United States argued in *Bossier I*, this authority to consolidate precincts after they had been used to build the Board districts hardly authorized the Police Jury or Board to *split* the existing precincts, and thus create *more* precincts.[35]

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[34] Appellants' contention that such precinct splits are "common" is equally misleading. U.S. Br. 46. Appellants' own witness was able to cite only three examples of *other* Louisiana jurisdictions that had split a "few" precincts. J.A. 214. It appears that those three Boards used the *same* precincts as those used by the Police Jury, which is perfectly legal (*see supra* note 33) or were done to accommodate the Justice Department objections, as also permitted by state law. J.A. 377. These examples are thus irrelevant because they involve entirely dissimilar situations.

[35] The Board cartographer's reference to working with the Police Jury to "alter" precinct lines can only be understood as a reference to *consolidating* the precincts *after* the Board's plan was complete; not splitting precincts in the manner done by the NAACP plan. U.S. Br. 37 (citing App. 174a ¶ 102). It is stipulated that the cartographer discussed "*consolidat[ing]* some precincts" "*after* January 1, 1993" with members of

Far from being a *post hoc* rationalization, the undisputed facts establish that the *contemporaneous* explanation for rejecting the NAACP alternative was that the district attorney and the Board's cartographer both correctly informed the Board that the NAACP's massive precinct splitting was a facial violation of state law. J.A. 177; App. 83a-84a; App. 179a ¶ 102; J.A. 180. Indeed, the NAACP *itself* recognized that its plan violated the state law prohibition against precinct splits, but merely maintained that the Voting Rights Act preempted this law. J.A. 195-96. The unrebutted facts also establish that prior Board plans had *never* split the Police Jury precincts and that the Board had never considered any plan that split precincts in the 1990 cycle. J.A. 250-51; Tr. (Myrick) at 118.

Even if state law did not render any plan with a black majority district facially void, every objective reason strongly counseled against more than doubling the existing number of precincts in this poor rural parish. This Court has already vividly described the "electoral nightmare" and "multiplied" costs caused by racially-motivated line drawings which required Harris County, Texas to almost double its existing precincts and "thrust" voters "into new and unfamiliar precinct alignments, a few with populations as low as 20 voters." *Bush*, 517 U.S. at 974 (quotations omitted).[36] In Bossier, the number of precincts would have increased *115%*, from 56 to 121, and 17 of those 65 new precincts would have had fewer than 20 people in them. J.A. 455-96. The cost of each new precinct was approximately $850 or, in the aggregate, $55,250, for *every* state, federal and local election. J.A. 275.

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the Board and Police Jury. App. 165a ¶ 61 (emphasis added). Conversely, the cartographer concededly knew and informed the Board that the Board's district lines could not split precinct lines under state law, and he never presented any of the Board members with a plan that split any precinct lines. J.A. 250-51; Tr. (Myrick) at 118.

[36] *See Shaw II*, 517 U.S. at 912 (criticizing precinct splits); *Johnson v. Miller*, 864 F. Supp. 1354, 1367, 1376 (S.D. Ga. 1994) (same).

Finally, "cutting across pre-existing precinct lines . . . is part of the constitutional problem insofar as it disrupts nonracial bases of political identity and thus intensifies the emphasis on race." *Bush*, 517 U.S. at 980.

Appellants allege that the Board's plan did not honor two "factors that it had previously considered 'paramount.' " A-I Br. 29. First, appellants make much of the fact that the Board's plan supposedly "pitted two pairs of Board incumbents against each other." U.S. Br. 38; A-I Br. 29. But pairing two incumbents is a problem only if *both* members of the pair will seek reelection, and the unrebutted testimony establishes that one member of each of these pairs had already decided *not* to run for reelection. *See* J.A. 54, 103, 108. (Incumbent Musgrove, paired with incumbent Jackson, had decided not to run again; incumbent Gray, paired with incumbent Harvey, had decided not to run again). Thus, unlike the NAACP Plan which greatly disfavored incumbents by radically redrawing every school district and pairing them, Tr. (Musgrove) at 46, the Police Jury plan was in no way inconsistent with the Board's interest in protecting incumbents. Second, appellants note that there was not a school in each district in the Board's plan. Yet, there is no evidence that appellants' newly-minted principle was a "factor[ ] that [the Board] had previously considered paramount," nor that the NAACP plan advanced this interest. A-I Br. 29. To the contrary, the Board *never* gave the cartographer school attendance maps or otherwise indicated this was a criterion. App. 174a ¶ 88. Since board members represent people, not buildings, there is no basis for believing that this is a traditional districting criterion, and appellants cannot cite a single case suggesting it is. Conversely, the Board's plan was superior to the NAACP plan for *all* recognized districting principles – compactness, preserving municipal and other boundaries, etc. – and the appellants cannot advance a *single* race-neutral reason for adopting the maximizing alternative. J.A. 504, 509; J.A. 455-96; Joiner Rebuttal Testimony at 7.

Appellants also maintain that the Board "rushed to a decision" in September and October 1992, when its elections were two years away. A-I Br. 36, 37; U.S. Br. 6. Again, the Board was required by state law to complete its redistricting procedures by *December 31, 1992*, J.A. 88, and thus the fact that its *elections* were two years off is utterly irrelevant.

Appellants also suggest that the Board has somehow violated its desegregation decree, even though the Justice Department has never so argued in the *school desegregation* case, or sought sanctions or modification of the decree. There is no evidence that the school's alleged racial imbalance is attributable to the Board's conduct, as opposed to demographic factors over which it has no control. *See Freeman v. Pitts*, 503 U.S. 467, 494 (1992). Moreover, contrary to appellants' suggestion, this Board's disbandment of a newly-constituted biracial committee in no way suggests noncompliance with any school desegregation decree or duty. In fact, the Board voluntarily established this committee in 1993, at the request of the NAACP. App. 183a ¶ 113.[37]

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[37] The committee was dismissed when it exceeded its desegregation advisory role and instead began to involve itself in educational policy matters that are "committed to the control of state and local authorities." *Board of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 91 (1978). The initial biracial committee last met *twenty-three years ago* in 1976, when perhaps one current Board member was serving. App. 182a ¶ 112. This committee was established pursuant to a *consent* decree and was charged with "mak[ing] recommendations as to whether or not the present desegregation plan is to be reviewed." *Id.* (internal quotations omitted). This plainly implies that it was intended merely to make specific recommendations for a unitary system, not serve as a permanent governmental bureaucracy. It is thus entirely understandable that the interest of the volunteer citizens who served on the committee waned over time. There is nothing in the record suggesting that the Justice Department, the private plaintiffs or the black community ever complained about its dormancy. Indeed, the *lawyer* for the private desegregation plaintiffs since the 1970s testified that he was *unaware* of any biracial committee requirement until 1993. Davis Testimony at 12.

In sum, while it is theoretically conceivable that the Board made the right decision for the wrong reason, it is not possible that the district court's contrary conclusion is "clearly erroneous." *Anderson v. Bessemer City*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.")[38]

CONCLUSION

The appeal should be dismissed for want of jurisdiction, or in the alternative, the judgment of the district court should be affirmed.

Respectfully submitted,

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[38] The sum total of appellants' purpose case thus reduces to the complaint that the district court failed to sufficiently discount the Board's appointment of a black member for the only vacancy available and did not put the most nefarious possible spin on certain hearsay statements that Board members allegedly conveyed to the appellant-intervenor and another civil rights advocate. App. 108a-09a. This quibbling over the import (or existence) of, at worst, ambiguous acts and statements is of no consequence because "such questions of credibility are matters for the District Court," and this Court will not "second-guess the District Court's assessment of the witnesses' testimony." *Bush*, 517 U.S. at 970, 971. As even the dissent conceded, the Board members' alleged "statements are subject to different interpretations" and "standing alone would certainly be insufficient to show discriminatory purpose." App. 133a.

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Nos. 98-405 and 98-406

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL APPELLANT

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1. *Justiciability.*

Appellee argues (Bd. Br. 8-11)[1] that this case is moot because the next regularly scheduled School Board election will not be held until 2002, by which time it should have adopted a new redistricting plan. As we have explained in our brief in opposition to appellee's motion to dismiss or affirm (at 1-3), appellants retain a live interest in the outcome of this litigation. In Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, Congress granted voters (and the Attorney General) a statutory right against the

[1] As used in this reply brief, "Bd. Br." refers to appellee's brief on the merits in this Court.

implementation of voting changes that have not been properly precleared.[2] Thus, if this Court reverses the district court's preclearance judgment, voters in Bossier Parish might well be entitled to a special election held under a lawful plan that complies fully with Section 5. That lawful plan might be developed by the Board and precleared by the Attorney General or the district court, or (should the Board fail to hold a special election on its own initiative) elections might be ordered by a federal court under a plan fashioned by that court as a remedy for the Board's violation of Section 5.

Appellee suggests (Bd. Br. 11) that, if the district court's preclearance judgment is reversed and new elections are ordered, minority voters in the Parish would receive no benefit because its previous 1980s plan was little different from the 1992 plan, in terms of its effect on minority voting rights. That argument proceeds from the incorrect assumption that there would be no objection to holding elections under the 1980s plan. In fact, the 1980s plan is severely malapportioned. See J.S. App. 171a-172a. It is appropriate to assume that, if the district court's judgment is reversed and the Board then chooses or is ordered to hold a special election, the Board would not hold the election under an unconstitutional plan; and, if the Board attempted to do so, use of the 1980s plan would likely be promptly challenged in district court. Cf. J.A. 41-42 (prior equal-apportionment challenge to implementation of 1980s plan).

Even if this case were moot, the appropriate action would be for the Court to vacate the lower court's judgment and to

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[2] In a related context, this Court has consistently held that "[t]he . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'" *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 578 (1992); see *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 208-212 (1972).

remand the case with instructions to dismiss the complaint. See Gov't Br. in Opp. to Mot. to Dism. or Aff. 2-3 n.1. Appellee erroneously relies (Bd. Br. 11-12 n.10) on *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U.S. 18, 26 (1994) to argue that the Court should dismiss the appeals rather than vacate and remand. In that case, however, the controversy became moot because the parties had voluntarily settled the case. In such a situation, "the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur." *Id.* at 25. The Court reaffirmed, however, that "[a] party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." *Ibid.* That is the case here, where the government and the Price appellants have appealed twice from the district court's decision to preclear the 1992 plan.

2. *The Proper Scope of Section 5.*

a. Appellee's attempt to argue that the purpose prong of Section 5 is limited to retrogressive intent leads it to the remarkable assertion that there is little if any connection between Section 5 and the Fifteenth Amendment. Bd. Br. 25-28; see Bd. Br. 27 ("there is very little congruence between the Constitution and § 5"); Bd. Br. 28 n.21 ("nothing in the legislative history indicates that § 5 reaches 'racially motivated voting changes' that violate the Constitution"). The Voting Rights Act of 1965 itself, however, stated that its principal animating purpose was "[t]o enforce the fifteenth amendment to the Constitution of the United States." Pub. L. No. 89-110, 79 Stat. 437.[3]

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[3] See also *South Carolina* v. *Katzenbach*, 383 U.S. 301, 324-327 (1966) (explaining that Congress enacted Section 5 to enforce the Fifteenth Amendment); *id.* at 337 (upholding Section 5 as "a valid means for carry-

The weakness of appellee's effort to divorce Section 5 from the Fifteenth Amendment is amply demonstrated by the outlandish consequences of its argument. Under appellee's theory, if in 1965 a town had (by law or practice) effectively barred all blacks from voting in town elections, and had then, after the enactment of the Voting Rights Act, enacted legislation with the purpose of accomplishing the same result--for example, by altering the jurisdiction's boundaries to exclude all blacks from residency (cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960))—the Attorney General or the federal courts would have been required to preclear that voting change, because it would not have had the purpose or effect of making the position of blacks in the town worse. Or, if an all-white town enacted legislation prohibiting blacks from voting, that legislation would also have to be precleared for the same reason, even though it would flatly violate the Fifteenth Amendment (cf. *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987)).[4] The Court should

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ing out the commands of the Fifteenth Amendment"); S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, at 17 (1965) (joint statement of 12 members of Judiciary Committee) ("The proposed legislation implements the explicit command of the 15th amendment."); H.R. Rep. No. 439, 89th Cong., 1st Sess. 6 (1965) ("The bill, as amended, is designed primarily to enforce the 15th amendment to the Constitution of the United States and is also designed to enforce the 14th amendment.").

[4] In suggesting that such results would be unexceptionable, appellee argues (Bd. Br. 20) that *Beer* v. *United States*, 425 U.S. 130 (1976), held that "[d]eliberate maintenance of an at-large system for purely discriminatory reasons does not offend § 5." See also Bd. Br. 23 n.17 (noting that *Beer* held that New Orleans' maintenance of two at-large seats did not implicate Section 5). The discussion in *Beer* to which appellee refers concerned the distinct principle, unrelated to this case, that voting practices that are not *changed* are not subject to Section 5 at all. See 425 U.S. at 138-139. That argument is unavailing in this case; the 1992 School Board plan at issue here is, of course, a voting change. For the same reason, appellee errs in arguing (Bd. Br. 38) that the Attorney General

reject a construction of Section 5 that leads to results so demonstrably at odds with Congress's intent.[5]

We have also pointed out (Gov't Opening Br. 20-23) that appellee's theory is inconsistent with the specific purpose behind the preclearance requirement of Section 5, to eliminate the pattern by which jurisdictions simply replaced one unconstitutional voting practice, struck down by the courts, with another one designed to accomplish the same result, requiring further litigation by the Attorney General and private parties to enjoin the replacement plan. Appellee argues (Bd. Br. 40 n.30) that a district court would not permit a covered jurisdiction to substitute one discriminatory plan for another. A jurisdiction might well *try* to accomplish just such substitution, however. Under standard

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and this Court were "forced to preclear the two at-large seats retained in the *Beer* reapportionment plan." The Attorney General and the Court were not forced to preclear those seats; rather, they were not subject to preclearance at all, because their retention did not constitute a voting change. See 425 U.S. at 139. It is true, of course, that because Section 5 is limited to voting *changes*, it cannot be used to root out *all* unconstitutional voting discrimination. Congress's decision to tailor the powerful remedy of preclearance to voting changes, however, reflects its particular purpose in Section 5 to prevent covered jurisdictions from avoiding the dictates of the Constitution by replacing one unconstitutional voting plan with another. See Gov't Opening Br. 20-23.

[5] Appellee erroneously contends that *Beer* and *City of Lockhart* v. *United States*, 460 U.S. 125 (1983), concluded that Section 5 "did not in any way prohibit" the perpetuation of existing discrimination (see Bd. Br. 22-23 & n.17). Both cases evaluated the plans at issue only under the effect prong of Section 5, and not the purpose prong, and found no retrogressive effect. While it is true that a voting change may be denied preclearance under the effect prong of Section 5 only if it makes the position of minorities worse than before, no decision of this Court suggests that a voting change should be precleared if it has the purpose of reinforcing existing racial discrimination in official voting practices. See *South Carolina*, 383 U.S. at 315-316 (noting that purpose of Section 5 was to prevent covered jurisdictions from "perpetuat[ing]" voting discrimination).

rules governing constitutional litigation, if a district court strikes down one voting plan as unconstitutional, it is up to the covered jurisdiction in the first instance to develop a new plan. See *Chapman* v. *Meier*, 420 U.S. 1, 27 (1975). The government and voters would then be required to go back to the district court, and would bear the burden to prove that the substitute plan was unconstitutional in order to prevent its implementation—exactly the unsatisfactory situation before Section 5 was enacted. Even if the jurisdiction's effort was eventually stymied by the district court, it would have successfully delayed minority voters' enjoyment of the full exercise of their right to vote. That prospect is impossible to square with Congress's specific objective in Section 5, "to shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966).

b. The plain language of Section 5 prohibits enforcement of a voting change enacted with the "purpose" of "denying or abridging the right to vote on account of race" (42 U.S.C. 1973c)—language that straightforwardly reaches a voting change enacted with the purpose to discriminate against black voters. Appellee presents several unpersuasive arguments to avoid the thrust of this language. It argues (Bd. Br. 26), for example, that "on account of race," as used in Section 5, cannot refer to unconstitutional, purposeful racial discrimination because Congress used the same language in amended Section 2 of the Act, 42 U.S.C. 1973, which does not contain a purpose requirement. But Section 2 does reach purposeful racial discrimination in official voting practices, see *City of Mobile* v. *Bolden*, 446 U.S. 55, 60-61 (1980) (plurality opinion) (emphasizing close connection between Section 2 and Fifteenth Amendment), even though, like Section 5, it reaches more broadly as well. The fact that neither statute reaches *only* purposeful discrimination hardly suggests that purposeful discrimination is *outside* either one.[6]

Appellee also argues (Bd. Br. 19-20) that, because *Beer* v. *United States*, 425 U.S. 130, 141 (1976), held that the effect prong of Section 5 reaches only voting changes having a retrogressive effect, the purpose prong must also be limited to changes enacted with the intent to retrogress. We have explained, however, that *Beer*'s construction of the effect prong of Section 5 reflects concerns about that statute's reach *beyond* the moorings of the Constitution. See Gov't Opening Br. 29-32. *Beer* does not suggest that the separate purpose prong of Section 5 fails to reach all voting changes enacted with an unconstitutional, racially discriminatory purpose. To the contrary, the Court observed in *Beer* that a voting change "could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional." 425 U.S. at 142 n.14.

In an effort to avoid the force of that language in *Beer*, appellee suggests (Bd. Br. 35) that *Beer* merely observed that "a reapportionment which satisfies § 5 may nonetheless violate the Constitution." But the Court in *Beer*, immediately after the language quoted above, proceeded to observe that the government had "made no claim" that the districts at issue in *that case* were unconstitutional. See 425 U.S. at

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[6] Moreover, when the 1982 Senate Report to which appellee cites explained that the phrase "on account of race" does not refer to purposeful discrimination, it stressed that Section 5 expressly covers voting changes enacted with the purpose to discriminate on account of race, by its use of the *separate* term "purpose." The point made by the Senate Report was that enactments having the "effect" (or "result") of denying or abridging the right to vote "on account of race" should be covered in Section 2, and that, in the context of effects as well, the phrase "on account of race" does not refer to purposeful discrimination. See S. Rep. No. 417, 97th Cong., 2d Sess. 27-28 n.109 (1982).

142 n.14. The Court discussed the Constitution precisely because of its relevance to the standards for preclearance under Section 5. The Court also stated in *Beer* that an ameliorative plan "cannot violate § 5 *unless* [it] so discriminates on the basis of race or color as to violate the Constitution." *Id.* at 141 (emphasis added). Thus, the Court's discussion about unconstitutional voting changes related directly to its construction of Section 5. Congress, moreover, codified that precise discussion in *Beer* when it subsequently reenacted Section 5 in 1982. See Gov't Opening Br. 29.

Furthermore, if appellee's exceedingly narrow construction of Section 5's purpose prong were correct, it is difficult to see why Congress would have adopted it.[7] As a practical matter, the purpose prong as so construed would add little if anything to the retrogression analysis required under the effect prong. In almost every case, the Section 5 inquiry would be effectively exhausted by an analysis of the effects of a voting change to determine whether the change was retrogressive. If the change was retrogressive, then preclearance would be denied without any consideration of

[7] In a particularly unpersuasive example designed to show that its construction of Section 5's purpose prong is not more narrow than the Constitution, appellee argues (Bd. Br. 27) that, if a jurisdiction decided to eliminate a majority-black district "for purely race-neutral reasons," such an action would have a retrogressive purpose, but not a discriminatory purpose in violation of the Constitution. It is difficult to see, however, that the jurisdiction's *purpose* in enacting such a provision, if "race-neutral," would be retrogressive (even though the effect might be). As this Court explained in *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 279 & n.24 (1979), under the analytical framework of *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977), a prohibited "purpose" implies that the decisionmaker took action "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." If, therefore, appellee's hypothetical jurisdiction indeed acted for "race-neutral reasons," it would not have acted "because of" the plan's retrogressive effect.

the change's purpose; but if the change did not have a retrogressive effect, then (in appellee's view) preclearance could be denied only if the covered jurisdiction had enacted the voting change in an unsuccessful effort to achieve retrogression. Nothing in the text, legislative history, or decisions of this Court construing Section 5 suggests that the purpose prong has such a trivial reach, limited to the case of the incompetent retrogressor.[8] Cf. *United States* v. *Albertini*, 472 U.S. 675, 682-683 (1985) (rejecting construction of statute that would render clause "almost superfluous").

c. Appellee's effort to wave away this Court's precedents fares no better. On this point we refer the Court to our opening brief (at 24-29), but we note that appellee's effort (Bd. Br. 28-29) to recharacterize *City of Pleasant Grove*, *supra*, is particularly strained. In that case, the Court denied preclearance to annexations by an all-white town of vacant land and land populated only by whites for the purpose of "provid[ing] for the growth of a monolithic white voting block, thereby effectively diluting the black vote in advance." 479 U.S. at 472. The Court could not have decided the case on the basis, suggested by appellee (Bd. Br. 29), that

[8] To the contrary, the design of the statute suggests that the purpose prong was intended to reach unconstitutional, racially discriminatory enactments, and that the effect prong was designed to reach in addition those enactments that, because of their retrogressive effect on minorities' position, would impede their ability to overcome the remaining effects of past discrimination. See *City of Rome* v. *United States*, 446 U.S. 156, 175-178 (1980). In addition, some voting changes are more readily susceptible to analysis under the purpose prong than under the effect prong. For example, when a jurisdiction creates a new elected office or position, or chooses an election method for a new governing body, it may be difficult to determine whether the change is retrogressive, and a purpose analysis may be more fruitful to determine whether the change implicates Congress's concerns in Section 5. See 28 C.F.R. 51.54(b)(4).

the annexation of land then populated only by whites could have made "minority voters worse off than they were prior to the annexation," for there were no minority voters in the City of Pleasant Grove to be made "worse off."[9]

Appellee appears to acknowledge (Bd. Br. 30 & n.23) that *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1166 (1983), rejected the position it is now advancing, but it suggests that the Court should disregard that decision because the Court mistakenly overlooked the possibility that the voting change considered there caused minor retrogression in one of the two districts at issue. We have explained (Gov't Opening Br. 27-28), however, that the appeal in *Busbee* was presented to this Court on precisely the opposite assumption, *viz.*, that the plan at issue had no retrogressive purpose or effect.[10] Nor did the government

[9] Appellee suggests (Bd. Br. 30) that the lower court echoed *City of Pleasant Grove* when, in evaluating retrogressive purpose, it considered and rejected the possibility that the Board might have been motivated to break up black "voting blocks before they could be established" (emphasis omitted). This argument, we note, is impossible to square with appellee's other argument—based on the same language in the district court's opinion—that the district court was considering discriminatory, and not just retrogressive, intent when evaluating the evidence (see Bd. Br. 14-15). Moreover, the district court was expressing the view that a purpose to "divide and conquer the black vote" (J.S. App. 6a) might actually be a retrogressive purpose *if* there were evidence that *other* aspects of the Board's earlier voting plan permitted black political gains; but of course that was not so, because the previous plan was also dilutive of black votes.

[10] See 549 F. Supp. at 516 (district court's finding that "there is no retrogression" and thus, "technically, the voting plan does not have a discriminatory effect, as that term has been construed under the Voting Rights Act") (citing *Beer*); see also *Busbee*, J.S. at i (question presented assumes no retrogressive purpose or effect); *id.* at 7 (arguing that the plan "significantly enhanced black voting strength" in one district while "maintaining an influential level of black voters" in the other); *id.* at 22 (citing district court finding of no retrogression).

argue in that case that the lower court's decision should be affirmed on the alternate basis that the plan in fact had a retrogressive effect. Appellee's reading of *Busbee* should be rejected because "[q]uestions which merely lurk in the record are not resolved" by summary affirmances, and "no resolution of them may be inferred." *Illinois State Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 183 (1979) (citations and internal quotation marks omitted).

d. Finally, to avoid the conclusion that Section 5 reaches unconstitutional, intentional vote dilution, appellee argues (Bd. Br. 19) that vote dilution is an inherently relative concept, and so suggests that the Department of Justice, in concluding that the 1992 plan was dilutive, must have been comparing that plan to the NAACP plan.[11] In determining whether a plan has an unconstitutional, racially discriminatory purpose, however, the Justice Department does not simply compare it to other, possible plans; indeed, in this case, the Department informed the Board that it "is not required by Section 5 to adopt any particular plan." J.S. App. 235a. Rather, the Department undertakes a fact-intensive, case-specific analysis based on *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977), of the circumstances under which district boundary choices have been made, to determine whether or not those choices reflect an intent to minimize or cancel out minority voting strength within particular communities. That analysis takes into account whether legitimate, nondiscriminatory governmental purposes support the jurisdiction's asserted reasons for selecting those boundary lines. And while Section 5 does place the burden on the covered jurisdiction to show that its plan lacks

[11] In its discussion of this point, appellee introduces the novel concept of "§ 5 dilution," by which it apparently means retrogression in the context of redistricting. See Bd. Br. 19-20.

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a discriminatory purpose, Congress plainly did not intend that burden to be impossible for a covered jurisdiction to meet.[12] If the covered jurisdiction puts forward evidence showing that its voting change is not retrogressive and raising no concerns under the *Arlington Heights* framework for analyzing discriminatory purpose, the voting change is likely to be precleared, either by the Attorney General or the court, at least absent other evidence.[13]

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[12] There is no basis for appellee's suggestion (Bd. Br. 39) that, if Section 5 does require the Attorney General and the preclearance court to consider unconstitutional purpose, then the burden should be on the government to show a constitutional violation. The statute places the burden of demonstrating the absence of discriminatory purpose on the jurisdiction. See *City of Pleasant Grove*, 479 U.S. at 479; *City of Rome*, 446 U.S. at 183. Appellee's reliance on *Miller* v. *Johnson*, 515 U.S. 900, 916-917 (1995), is misplaced, for that case arose in the context of litigation by private parties challenging a districting plan as unconstitutional under the Fourteenth Amendment. In such constitutional litigation—as generally in civil litigation—the burden is on the plaintiff to establish all the elements of the cause of action to prevail. The fact that the Department of Justice—during the time in which it maintained that a "clear violation" of Section 2 also required denial of preclearance under Section 5 (see J.S. App. 32a)—assumed the burden of proving a Section 2 violation (see Bd. Br. 39) does not suggest that the statute places on the Department the burden of proving a *constitutional* violation, and the Department has not previously taken the position that it has that burden. While the Department previously believed that *Beer* placed on it the burden of proving a Section 2 violation in the Section 5 preclearance context, this Court's decisions, especially *City of Pleasant Grove* and *City of Rome*, make clear that Section 5 places the burden of proving the absence of discriminatory intent on the covered jurisdiction.

[13] Appellee also suggests (Bd. Br. 36-37) that Congress could not have authorized the Attorney General or the preclearance court to decide constitutional questions in the Section 5 context and then also authorize a subsequent constitutional challenge to a precleared voting change. The Attorney General might, however, not interpose an objection for a variety of reasons, including the possibility that the covered jurisdiction had not submitted all the relevant evidence to her (as was the case with the Police Jury's submission of its plan, see Gov't Opening Br. 6); the government or private parties might later discover evidence showing that the plan had been enacted with a discriminatory purpose, and pursue Section 2 or constitutional litigation on that basis. Further, although private parties are often allowed to intervene in Section 5 litigation, there is no necessity that they be present, and preclearance cases in the courts are often litigated only against the government. By allowing a subsequent constitutional challenge to be brought, even by private parties, and even after a voting change has been precleared, Section 5 balances the interest of the covered jurisdiction in implementing its voting change promptly with the interest of voters in being free of unconstitutional voting changes.

3. *The Board's Discriminatory Intent In Adopting The 1992 Plan.*

Appellee argues (Bd. Br. 12-13) that the district court did not rule that the purpose prong of Section 5 is limited to retrogressive intent, but also considered whether the Board had a discriminatory (but not retrogressive) intent in adopting the 1992 plan, and found (Bd. Br. 43-50) that no such discriminatory intent was present. We have explained that the district court's opinion, although unclear, is better understood as limiting the scope of its inquiry to retrogressive intent. Gov't Opening Br. 41-42. Even if the district court did consider the question of discriminatory (but not retrogressive) intent, any findings that it may have made on that question cannot be sustained, because they were not made pursuant to the appropriate legal analysis, and are clearly erroneous in any event.

a. As we have explained (Gov't Opening Br. 42-43), the district court failed to apply the analytical framework established in *Arlington Heights*, 429 U.S. at 265-266, to determine whether the Board acted with a discriminatory (but not retrogressive) purpose. The court's discussion of the evidence under *Arlington Heights* related only to retrogressive intent, and it made only summary reference to the question of an otherwise discriminatory intent. Moreover, any finding

that the Board acted without a discriminatory intent is impossible to square with other findings of the district court, such as its acknowledgment that the Board was motivated by a "tenacious determination to maintain the status quo," that the Board "departed from its normal practices," and that the Board "did not welcome improvement in the position of racial minorities." J.S. App. 7a. At a minimum, therefore, a remand would be required for the district court to evaluate the evidence under the correct legal standard.[14]

b. In any event, appellee's effort to defend the district court's "finding" falls well wide of the mark. Appellee makes essentially three arguments. First, it contends that the Board was required to adopt the Police Jury plan, and to reject any other plan, because of its supposed obligation to adopt a plan before December 31, 1992, without splitting any precincts. Bd. Br. 44-46. Second, it argues that the Board properly rejected the NAACP plan because that plan would have required the creation of an inordinate number of new precincts in order to develop majority-black districts. Bd. Br. 47-48. Third, it maintains that the 1992 plan did not dilute black voting strength. Bd. Br. 3-4 n.3, 6 n.5, 44. All three arguments fail.

First, the supposed need to develop a plan that would avoid any precinct splits could not have motivated the Board to adopt the Police Jury plan. The Board initially had little interest in adopting the Police Jury plan because that plan failed to respect its traditional priorities in redistricting—incumbency protection and location of schools in districts.

[14] Appellee again suggests (Bd. Br. 14) that, when the district court discussed the 1992 plan's "dilutive impact," it must have been addressing discriminatory intent generally, and not just retrogressive intent, because it understood that this Court had used the term "dilutive impact" to refer to a discriminatory plan, rather than a retrogressive plan. That suggestion is plainly wrong, for the reason explained in our brief in opposition to appellee's motion to dismiss or affirm (at 5 n.3).

See Gov't Opening Br. 36.[15] But the Board's cartographer Gary Joiner predicted at trial that, as a practical matter, *any* plan other than the Police Jury plan that would be, as he put it, "as strong as this one" (meaning the Police Jury plan) would require splitting precincts. See J.A. 271.[16] And indeed, when Joiner met with the Board in September 1991, after the Police Jury had adopted its plan, he distributed precinct maps because, he explained, the Board would have to "work with the Police Jury to alter precinct lines." J.S. App. 174a. Nothing in the record suggests that Joiner and the Board believed that they could not ask the Police Jury to alter precincts after December 31, 1992, or that *at the time* they believed themselves under an obligation to redistrict before that date (since the next Board election was not until 1994). See *id.* at 172a, 173a.

Second, in criticizing the NAACP plan for requiring the creation of *too many* new precincts, appellee mistakenly

[15] In an effort to avoid the effect of its stipulations that the Board was traditionally concerned with incumbency protection (J.S. App. 171a, 172a), appellee suggests (Bd. Br. 48) that one member of each pair of incumbents placed in the same district under the Police Jury plan had "already" decided not to run for reelection. The parts of the record on which appellee relies, however, establish only that one member of each pair had decided not to run for reelection by the time discovery was taken in *1994*—not when the plan was adopted in 1992. It is hardly surprising that one of each pair thrown together in a new district eventually decided not to challenge the other incumbent; but that only shows that the Police Jury plan in fact disserved incumbency protection, which the record as a whole demonstrates was one of the Board's traditional priorities.

[16] Indeed, given that there was great variation among the size of the precincts under the Police Jury plan, and that some of them were quite large (one had 5440 people) while others were quite small (one had 72 people), it would have been very difficult, if not impossible, to draw any plan other than the Police Jury plan that would meet equal-apportionment requirements without breaking at least some of the precincts that formed the building blocks of that plan. See J.A. 497-499.

assumes that the relevant question is why it rejected the *NAACP* plan; but the pertinent question is whether it acted with discriminatory intent when it adopted the *Police Jury* plan, instead of (for example) exploring some other option that would not have minimized blacks' electoral opportunity. In fact, the Board could have drawn a plan containing two majority-black districts with as few as 46 *total* precincts—only 3 precincts more than the number in 1990, and 10 precincts fewer than in the Police Jury plan. J.A. 236-237. Furthermore, appellee significantly exaggerates both the number and the cost of additional precincts that would have been required by the NAACP plan. Appellee asserts (Bd. Br. 4) that the NAACP plan would have split existing precincts 65 times, but it is important to understand that this does not mean that 65 *new precincts* would have been created, for many areas cut out of existing precincts could have been consolidated with each other or with other precincts—an option that Louisiana law permits. J.A. 380 (La. Rev. Stat. § 18:425.1 (West Supp. 1999)).[17] Such consolidations could have addressed any significant concern about increased costs. The record gives no indication, moreover, that the Board explored the costs that would be occasioned by such precinct splits, or ways to alleviate them.

Finally, in an effort to wriggle out of its concession and stipulations to the effect that the 1992 plan did dilute blacks' voting strength in the Parish (see Gov't Opening Br. 38-39), appellee argues that the record does not establish either that it was obvious that a reasonably compact majority-black district could be drawn in the Parish, or that the Parish experienced racially polarized voting. Both suggestions are wrong, even aside from the stipulations. Contrary to appellee's assertion (Bd. Br. 3-4 & n.3), Board members were aware that blacks were concentrated in certain areas, and most members also knew where those areas were. J.A. 94-100, 104-105, 109-110, 113-114, 116-124.

In addition, while Dr. Engstrom's report (J.A. 163-174) acknowledged the data limitations for doing ecological regression and extreme-case analyses for most of the elections he analyzed (almost all of the elections involved too few precincts for a reliable ecological regression analysis and no precinct that was homogeneously black), that does not suggest that his report could not validly conclude that racially polarized voting exists in the Parish. A regression analysis of the only interracial parish-wide race for local office in recent years (the 1988 primary election for the 26th Judicial District Court) revealed a high degree of racial polarization: 79.2% of black voters supported the unsuccessful black candidate, while only 28.9% of white voters did so. J.S. App. 202a-203a; J.A. 166-167. Dr. Engstrom explained (J.A. 165-167) that it is appropriate to consider the results of parish-wide elections where, as here, many districts contain too few precincts to obtain reliable estimates using ecological regression analysis of elections held in individual districts, and appellee introduced *no* expert testimony to the contrary, even on remand. Moreover, Dr. Engstrom was able to conclude, by examining results in homogeneously white precincts, that, in several School Board and other elections, white voters did not support black candidates. J.A. 168-170, 172-174. In fact, "[o]f the 14 elections since 1980 in which black candidates [ran] against white candidates for a single-member district or for mayor, only two candidates * * * won," and those successes were affected by a unique

[17] For the figure of 65 precincts, appellee relies on its Exhibit 11 (J.A. 455-496), a table that was not the subject of testimony or other explanation below. On its face, the exhibit does not suggest that 65 new precincts would need to be created under the NAACP plan. The exhibit identifies 65 precinct "cuts," but 13 of those "cuts" contain no population, and many others contain very small population totals. The "cuts" therefore could readily have been remedied by consolidation with other precincts.

circumstance, the presence of Barksdale Air Force Base. See J.S. App. 206a-207a; Gov't Opening Br. 4-5 n.2.

4. *Appellee's Effort To Introduce Extra-Record Information.*

Appellee continues to attempt to rely on extra-record information showing that, since the enactment of the 1992 plan, blacks have been elected to the School Board (Bd. Br. 5-6). Appellee was expressly offered the opportunity to reopen the record on remand to introduce evidence about the 1996 elections, but expressly declined to do so. J.S. App. 1a. It should not now be allowed to avoid the consequences of that decision.

As the district court concluded (J.S. App. 1a-2a & n.1), without being subjected to adversary testing and placed in context, those election results have no probative value.[18] They have not been subjected to the expert analysis of racial polarization and voter turnout that was conducted regarding previous elections. See *id.* at 201a-210a. Without such close analysis, it is impossible to draw reliable conclusions about the 1996 and 1998 election results. As this Court has previously cautioned, the fact that some blacks have been elected does not mean that either racially polarized voting or vote dilution has suddenly disappeared. See *Thornburg* v. *Gingles*, 478 U.S. 30, 75-76 (1986). Also, "the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the district experiences legally significant bloc voting." *Id.* at 57. Success of a minority candidate may be attributable to "special circumstances, such as the absence of an opponent

[18] The fundamental question is what the Board in *1992* expected and desired to be the consequences, for minority voting rights, of its redistricting plan. If, as the record otherwise establishes, the Board adopted that plan with a discriminatory purpose, the fact that its purpose may not have been entirely successful does not entitle it to preclearance of the plan.

[or] incumbency," *ibid.*; it may also be attributable to an effort to influence the outcome of ongoing voting-rights litigation, see *id.* at 76 n.37.

Indeed, there is reason to believe that a full analysis would lead to the conclusion that such "special circumstances" were present in the 1998 elections of all three black Board Members. Our limited review of the 1998 election results shows that one of the successful candidates, Kenneth Wiggins, was first appointed by the Board in 1997 to fill a vacant seat (which might have been an effort to influence this litigation), and then won election as an incumbent in 1998. Julian Darby and Vassie Richardson ran unopposed as incumbents in 1998. Darby was previously elected in 1996 from a district that, we have explained, has historically been somewhat less influenced by racial polarization because of the presence of Barksdale Air Force Base,[19] and his only opponent in the 1996 election was also black, a situation that is of limited utility in analysis of racially polarized voting patterns. In 1996, Richardson won election, in a district with the highest percentage of black voting-age population in the Parish, by only 35 votes, out of 1683 votes cast. Also, in three other Board elections held in 1996 and 1998, black candidates were defeated by white candidates.[20] This Court

[19] See Gov't Opening Br. 4-5 n.2. The Board's District 10 has the same lines as the district represented by Julian Darby's brother, Jerome, on the Police Jury. See J.S. App. 196a-198a.

[20] In 1996, black candidates were defeated by white candidates in run-off elections for Districts 1 and 7 (the latter has the second-highest percentage of black voting age population in the Parish). In 1998, a black candidate was defeated by a white candidate in District 3. Also, Jerome Blunt, appointed by the Board in 1992 to fill a vacant seat while the Board was considering redistricting plans and sworn in on the day that the Board voted its intent to adopt the Police Jury plan, was shortly thereafter defeated by a white challenger in a special election. J.S. App. 179a; see *id.* at 133a-134a n.9 (Kessler, J., dissenting) (observing that Board "appointed

should therefore decline to draw any conclusions about racially polarized voting or vote dilution from the 1996 and 1998 elections.

* * * * *

For the foregoing reasons, and for those set forth in our opening brief, the judgment of the district court should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

APRIL 1999

[Blunt] to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan").

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Nos. 98-405 & 98-406

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,
Appellant, and

GEORGE PRICE, *ET AL.*,
Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,
Appellee.

On Appeal from the United States District Court for the District of Columbia

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REPLY BRIEF OF APPELLANTS GEORGE PRICE, *ET AL.*

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INTRODUCTION

This Court's remand in *Bossier I*[1] called upon the D.C. District Court to address a legal issue under the Voting Rights Act of 1965: "[W]hether the § 5 purpose inquiry ever extends beyond the search for retrogressive intent." App. 45a. The D.C. District Court was to consider evidence that the Bossier Parish School Board ("Board" or "Appellee") violated an ongoing injunction in its federal court desegregation case, App. 51a, as well as facts the court apparently had excluded concerning the plan's dilutive effect on minority voting strength, App. 50a.

For a party seeking an affirmance, the Board advocates an unusually different opinion than the court below issued. The Board now seeks a legal standard it claims was not applied on remand: That preclearance of a voting change should be denied under § 5 only if the change has a "retrogressive purpose" to abridge or deny the right to vote on account of race. The Board's argument that "purpose" prohibits only voting changes adopted with the "purpose to retrogress" twists the statutory language and this Court's cases interpreting § 5 beyond recognition. This Court consistently has barred preclearance of voting changes adopted with any purpose that is racially discriminatory and has applied the comprehensive factual inquiry of *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), in making that determination.

The Board next asks this Court for new fact findings that are contrary to many of the findings and the parties' stipulations. The reason is apparent: If any court ever applied the *Arlington Heights* standard to the facts actually found and stipulated, as Judge Gladys Kessler has done twice, the Board will lose this case. This Court should reject out of hand the Board's invitation to make new fact findings in the

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1 *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997), Appendix to the Jurisdictional Statement ("App.") at 29a-77a.

course of resolving the legal issue presented on this appeal. [2]

I. SECTION 5 PROHIBITS PRECLEARANCE OF VOTING CHANGES ADOPTED WITH ANY RACIALLY DISCRIMINATORY PURPOSE.

Voting changes should be denied preclearance if they have the effect of retrogression or if purpose to discriminate on the basis of race or color is identified through the analysis outlined in *Arlington Heights*.

A. The Statute Itself. The plain language of § 5 makes clear that the "purpose" and "effect" prongs provide different protections. Congress provided that if a covered jurisdiction can demonstrate that a voting change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," it should be granted preclearance. 42 U.S.C. § 1973c. The "purpose" inquiry focuses on the contemporary motivation for the proposed voting change: "*does not have* the purpose." Congress' use of the present tense is consistent with the principle that analysis of discriminatory intent focuses on the state of mind of the actor at the time of the act. *See, e.g., McKennon* v. *Nashville Banner Pub. Co.*, 513 U.S. 352, 359-60 (1995); *Price Waterhouse* v. *Hopkins*, 490 U.S. 228, 250, 252 (1989); *id.* at 260-61 (White, J., concurring), *id.* at 261 (O'Connor, J., concurring). The "effect" analysis is different. It calls for a prediction of the impact of the voting change in the future: "*will not have* the effect." For a voting change such as a districting plan, "effect" is measured by comparing the impact of the present plan to the projected impact of the proposed plan. *See Beer* v. *United States*, 425 U.S. 130 (1976).

Appellee is incorrect that *Beer* construed the words "denying or abridging the right to vote on account of race or color" to limit both the "purpose" and "effect" inquiries to retrogression. Appellee's Brief ("Bd. Br.") at 17-19. The

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[2] Appellee's "mootness" argument was addressed in the Brief of George Price, *et al.*, Opposing Motion to Dismiss or Affirm at 2-4.

Beer Court made clear that retrogression is inherent in the word "effect":

> It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the "effect" of diluting or abridging the right to vote on account of race within the meaning of § 5.

425 U.S. at 141. The Court in *Beer* harmonized its holding with *City of Richmond* v. *United States*, 422 U.S. 358 (1975), stating that *Richmond* "decided when a change with an adverse impact on previous Negro voting power met the 'effect' standard of § 5." 425 U.S. at 139 n.11. Because the voting change in *Beer* was ameliorative with respect to the voting power of African-Americans, it had no "effect" prohibited by § 5. *See Bossier I*, App. 46a ("we have adhered to the view that the only 'effect' that violates § 5 is a retrogressive one," citing *Beer*, 425 U.S. at 141 and *City of Lockhart* v. *United States*, 460 U.S. 125, 134 (1983)).

If "purpose" were limited to retrogressive intent, purpose would be virtually read out of § 5. It is difficult to imagine public officials having the "purpose" to retrogress in adopting a voting change which cannot be projected to result in retrogression. Yet under Appellee's submission, that would be the universe of plans subject only to the "purpose" prong of § 5. An actually retrogressive voting change would be covered by the "effect" prong, with the "purpose" prong adding no evident protection. Section 5 should be read in a way that satisfies the Court's "duty to give effect, if possible, to every clause and word of a statute." *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955). *See Heckler* v. *Chaney*, 470 U.S. 821, 829 (1985); *United States* v. *Albertini*, 472 U.S. 675, 680-82 (1985).

Limiting "purpose" to "purpose to retrogress" also fails to square with the Court's holding in *Bossier I* that, in conducting the purpose inquiry, "courts should look to our decision in *Arlington Heights* for guidance." App. 48a. While the effect of the official action is a factor encompassed in the *Arlington Heights* inquiry, it is not dispositive.

Arlington Heights counsels that a court weighing discriminatory intent also should examine the historical context, sequence of events leading to the decision, contemporaneous statements of public officials, and other probative evidence. 429 U.S. at 267-68. If "purpose" were limited to intent to retrogress, where a voting change is not retrogressive it is difficult to imagine why the inquiry would proceed beyond consideration of the "effect."

Limiting application of § 5 only to retrogressive voting changes also would create vexing issues when changes are considered that do not lend themselves readily to the now well-developed vote dilution or other mathematical analyses. Section 5 covers many voting changes other than reapportionment, including procedural and residency requirements,[3] and leave policies for campaigning employees.[4] The Court should decline to adopt a rule of law ill-suited to protect against discrimination in the full range of voting practices covered by § 5.

Limitation of purpose to "purpose to retrogress" would leave minority voters in jurisdictions like Bossier Parish vulnerable to some forms of intentional racial discrimination. Nothing in § 5 suggests that some category of covered voting changes enacted by covered jurisdictions should evade any meaningful § 5 review because the mathematical possibilities for retrogression are absent or obscure. The Board's proposed plan should not be exempted from full *Arlington Heights* scrutiny for discriminatory purpose solely because it is impossible to retrogress from zero.

B. This Court's § 5 Decisions. Appellee claims that "*stare decisis* principles demand fidelity to *Beer* and *Lockhart*," Bd. Br. at 23 n.17. Appellants agree. *Stare*

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3 *See Hadnott* v. *Amos*, 394 U.S. 358, 365-66 (1969); *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 551 (1969) (discussing consolidated case, *Whitley* v. *Williams*); *City of Rome* v. *United States*, 446 U.S. 156, 160-61 (1980).

4 *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 38-43 (1978).

decisis has "special force" in cases involving statutory interpretation. *See Cedar Rapids Community Sch. Dist.* v. *Garret F.*, 119 S. Ct. 992, 999 n.10 (1999), citing *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172-73 (1989). *See also Holder* v. *Hall*, 512 U.S. 874, 886 (1994) (O'Connor, J., concurring in part and concurring in the judgment). The application of principles of *stare decisis* should not be limited here, however, to *Beer* and *Lockhart*.

1. At oral argument of *Bossier I*, counsel for the Board cited *Richmond* and *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987), for the proposition that "purpose" under § 5 is not limited to purpose to retrogress. Transcript of Oral Argument, 1996 WL 718469, at 30-31. He was correct.

Richmond would not have resulted in a remand for further development of the facts concerning discriminatory purpose if "purpose" had been limited to intent to retrogress. Although Appellee claims that the annexation at issue was "retrogressive," Bd. Br. at 30, the *Richmond* Court ruled that the annexation did not have a prohibited "effect" because the post-annexation election system fairly recognized minorities' political potential in the expanded jurisdiction. The Board claims that "[t]he Court . . . remanded the case to insure that the motivation behind the annexation was not to cause such obvious *retrogression* in black voting strength, but was done for 'verifiable, legitimate reasons.'" Bd. Br. at 31, quoting *Richmond*, 422 U.S. at 375 (emphasis in original). The word "retrogression" is nowhere to be found on the cited page nor anywhere in *Richmond's* remand directive.

The purpose inquiry in *Richmond* was not preempted by a finding that the voting change lacked a retrogressive effect:

> An official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute. Section 5 forbids voting changes taken with the purpose of denying the vote on the grounds of race or color. . . . An annexation

> proved to be of this kind and not proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be.

422 U.S. at 378-79.

In *Pleasant Grove,* decided after *Beer,* the Court held that proposed annexations of land that was vacant or inhabited by a few whites did not have a present effect on black voters in the city, since there were no black voters in the city. 479 U.S. at 470-71. Despite that, the Court held that the city had failed to carry its burden of demonstrating a lack of discriminatory purpose within the meaning of § 5. *Id.* at 472. The Court made clear that "purpose" is not limited to present circumstances and can contemplate future effects, *see* Bd. Br. at 28-29, but the analysis went further. The Court found the city's argument "also incorrect insofar as it implies that a covered jurisdiction can short-circuit a purpose inquiry under § 5 by arguing that the intended result was not impermissible under an objective effects inquiry. . . . We rejected such reasoning in *City of Richmond*. . . ." 479 U.S. at 471 n.11. *Pleasant Grove* would have resulted in a reversal and preclearance of the annexations if the only purpose comprehended by § 5 is purpose to retrogress, since no retrogression could have been involved.

2. The Appellee dismisses *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd,* 459 U.S. 1166 (1983), arguing that "the primary flaw in *Busbee* was that the submitting jurisdiction had 'split a cohesive black community in Districts 4 and 5,'" Bd. Br. at 30 n.23, quoting 549 F. Supp. at 498-99. The D.C. District Court in *Busbee* found that the overall "plan does not have a discriminatory effect," since the one majority black district in the previous districting plan remained in the new plan, and gained a few percentage points in black population. 549 F. Supp. at 516, citing *Beer,* 425 U.S. at 141. The splitting of the cohesive black communities in *Busbee* was highly relevant to the finding of discriminatory purpose. *Id.* at 517. This Court's summary affirmance can mean something other than agreement with the finding of discriminatory purpose, not limited to retrogressive intent,

only through a chain of logic something like this: This Court rejected the D.C. District Court's conclusion of no retrogressive effect; it adopted a definition of retrogression, at odds with *Beer,* that encompassed splitting of cohesive black communities even where one black majority district existed in the old and in the proposed plans; and it silently affirmed on that basis. It is inconceivable that the Court did this rather than accept the thorough and careful findings that the districting plan was infected with racial *animus*.

3. *Beer* itself took care to explain that "an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141. Appellee would have those words mean only that some separate constitutional case can be brought to attack a discriminatory but ameliorative voting change. Bd. Br. at 33. The Court, however, addressed whether an ameliorative apportionment can *"violate § 5,"* because it discriminates. *Accord Richmond,* 422 U.S. at 378-79 (a discriminatory voting change "has no legitimacy at all under our Constitution *or under the statute"* and *"is forbidden by § 5,* whatever its actual effect may have been or may be") (emphasis added)).

Section IV of Appellee's Brief addresses musings "raised by *dicta* in *Beer,*" Bd. Br. at 33, not by the questions presented in the Jurisdictional Statements, decided by the court below, or argued by the Appellee during the long course of these proceedings. Appellee embarks on this excursion because it needs to find some meaning for the language in *Beer* other than the apparent one: That § 5 prohibits preclearance of voting changes adopted with a discriminatory intent that is not retrogressive. Section IV of Appellee's Brief suggests the morass of legal issues that awaits if the Court restricts "purpose" to "purpose to retrogress."

C. The Principle Prohibiting Discriminatory Governmental Action. Appellee makes much of the statement in *Beer* that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial

minorities with respect to their effective exercise of the electoral franchise." 425 U.S. at 141, quoted in Bd. Br. at 17 n.13, 20. This statement stands alongside powerful assertions that "the basic purpose of Congress in enacting the Voting Rights Act was 'to rid the country of racial discrimination in voting,'" and that "[s]ection 5 was intended to play an important role in achieving that goal." *Beer*, 425 U.S. at 140, quoting *South Carolina* v. *Katzenbach*, 383 U.S. 301, 315 (1966). *Accord Bossier I*, App. 33a ("[t]he Voting Rights Act of 1965. . .was enacted by Congress in 1964 to 'attac[k] the blight of voting discrimination' across the Nation," quoting S. Rep. No. 97-417, at 4 (1982). Appellee suggests that § 5 reaches only voting changes adopted with the "intent to increase discrimination against minorities," Bd. Br. at 18-19, as if there is some acceptable level of racial discrimination in official acts regarding voting. That is contrary to the purpose and reach of § 5.

In the 1970 Voting Rights Act, Congress banned the use of any "test or device" as a prerequisite for voting or registration, 42 U.S.C. § 1973aa, thus stamping out some of the most flagrant means by which African-Americans had been denied the opportunity to vote at all. By requiring in § 5 that jurisdictions that had engaged in the most widespread voting discrimination preclear changes in voting practices and procedures, Congress did "freeze" voting practices. There is no reason to think, however, that Congress accepted that *status quo* as non-discriminatory as long as things got no worse for African-American voters.

It is unsurprising that Congress would bar preclearance of voting changes that are motivated by discriminatory animus, even voting changes that otherwise are valid. Anti-discrimination statutes -- and the constitutional amendments they enforce -- routinely prohibit conduct that would be legal and appropriate if motivated by legitimate goals. *See Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886) (striking down San Francisco laundry permit ordinance deliberately enforced to prevent Chinese from operating laundries); *Gomillion* v. *Lightfoot*, 364 U.S. 339, 341 (1960) (reinstating claim that

Alabama legislature's change in boundaries of City of Tuskegee from a square to a "strangely irregular twenty-eight-sided figure" was intended to deny Equal Protection to excluded African-Americans). A municipality has a legitimate interest in regulating laundries to avoid the danger of fire. States have authority to draw municipal boundaries. But where such acts are designed to exclude persons on the basis of race or nationality, even where the pattern of exclusion is stark "it was the presumed racial purpose of state action, not its stark manifestation, that was the constitutional violation." *Miller* v. *Johnson*, 515 U.S. 900, 913 (1995). *Accord Rogers* v. *Lodge*, 458 U.S. 613, 617 (1982) ("'the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose,'" quoting *Washington* v. *Davis*, 426 U.S. 229, 240 (1976)).

Federal courts generally refrain from reviewing the merits of legislative and administrative decisions because they are owed deference in the effort to balance competing considerations. *Arlington Heights*, 429 U.S. at 265. But "[w]hen there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified." *Id.* at 265-66. As authority for the proposition that even a single governmental act, lacking a pattern of official discrimination, is not immune from scrutiny for discriminatory intent, Justice Powell cited the page in *Richmond* that explained the reason for the remand to consider discriminatory purpose under § 5. *Id.* at 266 n.14, citing 422 U.S. at 378. Because "[a]cts generally lawful may become unlawful when done to accomplish an unlawful end," *Western Union Tel. Co.* v. *Foster*, 247 U.S. 105, 114 (1918), quoted in *Richmond*, 422 U.S. at 379, preclearance should be denied to any voting change adopted with a purpose to discriminate, as identified by the *Arlington Heights* analysis.

II. WHEN THE CORRECT LEGAL STANDARD IS APPLIED TO THE STIPULATIONS AND THE FINDINGS OF FACT, PRECLEARANCE SHOULD BE DENIED.

The D.C. District Court held that "[t]he question we will answer. . . is whether the record disproves Bossier Parish's *retrogressive intent* in adopting the Jury plan." App. 4a (emphasis added). Judge Kessler, in dissent, argued that her "colleagues have limited their § 5 purpose inquiry to a search for intent to retrogress," App. 13a, which the majority did not deny.

What Appellee characterizes as a "fact finding" by the D.C. District Court that the Board's redistricting plan was not motivated by discriminatory intent is a confused recitation of legal standards and questions presented in the opinion below, that is further confounded in Appellee's presentation. Contrary to Appellee's submission, the D.C. District Court did not make a clear finding on the record before it that there was no intent to discriminate in any way, including any intent to retrogress. Bd. Br. at 12. The D.C. District Court made two general statements about the facts concerning intent and whether they demonstrate only a purpose to retrogress or a broader discriminatory purpose:

First, it said that "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." App. 3a. This statement is inscrutable. It is not a finding one way or the other on whether there is evidence of intent beyond intent to retrogress. It seems to assume that all of the record evidence concerning the Board's purpose goes to the issue of intent to retrogress, which makes no sense with respect to a voting plan that is not retrogressive.

Second, the court stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here." App. 3a-4a, quoting *Bossier I*, App. 46a. The court did not describe what facts it could "imagine." A "finding" that the facts in this case do not measure up to a

standard set by unrevealed "imagined" facts cannot be called a fact finding to which this Court owes deference.

The case now is back before this Court for resolution of an issue of law concerning the meaning of "purpose" in § 5. The correct legal principle can be applied by this Court to the record because it is largely stipulated, App. 145a-232a, and was not reopened on the last remand. Application of the proper legal principle to the stipulations and fact findings warrants reversal and rejection of the Board's districting plan. Appellee's efforts to overreach that record are inappropriate here and inaccurate, as demonstrated by the examples that follow.

A. The NAACP Plan and Precinct-Splitting. The Board attempts to sow confusion when it asserts that it was faced with a choice between the NAACP plan and the Police Jury plan in late 1992 and had no choice but to adopt the Jury plan because the NAACP plan split precincts and thus was a facial violation of state law. Bd. Br. at 2-4, 20-21, 44-48. These assertions rest on a fundamental misunderstanding of the NAACP plan.

The NAACP plan was never offered as a "take it or leave it" proposal. Mr. Price presented it to prompt examination of whether majority-black districts could be part of the overall districting plan. Indeed, Mr. Price originally provided a drawing of only two election districts, to illustrate the point:

> The NAACP did not draw a complete plan because they were most interested in demonstrating ways to more fairly reflect black voting strength and did not want to raise issues as to the other districts: the School Board was free to draw them in any way they chose.

App. 177a, ¶ 99. Mr. Price was rebuffed not because the two districts would require precincts to be split, but because a Board official told him "he would need to come up with a plan that contained all twelve districts." *Id.* The Board never undertook what Mr. Price requested: Incorporation in the

Board's own planning of an effort to unify black communities into election districts.[5]

The configuration of precincts was a "barrier" to the drawing of majority African-American districts only because the Board allowed it to be. "[T]he parties have stipulated that school boards redistricting around the time . . . were 'free to request precinct changes from the Police Jury necessary to accomplish their districting plans.'" App. 84a, quoting Stipulation ¶ 23 (App. 151a). The Police Jury has power, subject to provisions of Louisiana law, "to change the configuration, boundaries, or designation of an election precinct." La. R.S. 18:532.1(A) (J.A. 385).

The D.C. District Court found that "[w]hen the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts. It hired the Police Jury's cartographer with the expectation that he would spend a substantial amount of time on the project." App. 108a. Indeed, the Board's cartographer gave precinct maps to the Board members, telling them that "they would have to work with the Police Jury to alter the precinct lines." App. 174a, ¶ 89. When the NAACP plan was presented and "summarily dismissed" by the Parish District Attorney and the Board's cartographer for the stated reason that it "crossed existing precinct lines, and therefore violated state law," they "were aware of the option of obtaining precinct line changes from the police jury." App. 179a, ¶ 102.

The D.C. District Court was correct that the Board could adopt a plan with precincts different from the Police Jury plan and work out an acceptable accommodation under Louisiana law.[6] First, state law provided a window from April 1, 1991

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[5] Appellees are incorrect that the NAACP plan "was drawn by William Cooper for the exclusive purpose of 'creat[ing] two majority black districts,'" Bd. Br. at 3 (quoting Mr. Cooper's testimony about a different plan at J.A. 371), since Mr. Cooper did not draw the NAACP plan at all. *See* App. 83a; 177a, ¶ 98.

[6] The Board claims that "Appellants' contention that such precinct splits are 'common' is . . . misleading." Bd. Br. at 46.

to May 15, 1991 within which the Police Jury could divide precincts in order to meet applicable state and federal guidelines in the creation of its reapportionment plan. La. R.S. 18:532.1.H.(2) (J.A. 389). The Police Jury developed its plan, which created new precincts, in this window. *See* App. 162a-165a, ¶¶ 58-63.[7] Had the Board begun its redistricting earlier, it could have worked with the Police Jury to develop precincts during the 1991 window that would accommodate a different plan. Second, the Board is incorrect that it was legally impossible for the Board, after missing the 1991 precinct change window, to adopt a plan that would require Police Jury approval of precinct changes because the Board had to act before December 31, 1992 but the Police Jury next could consolidate precincts only after January 1, 1993. Bd. Br. at 3. The Board could have adopted a plan before December 31, 1992, as it did, and asked the Police Jury actually to accomplish the precinct changes necessary after January 1, 1993. There was no School Board election until 1994, so the Board and Police Jury had ample time to work together.

The D.C. District Court cited witness testimony that precinct splits were "quite common," App. 107a, and that the witness had "routinely drawn redistricting plans that split precincts," App. 84a. The parties stipulated that two other parish school boards accomplished their recent redistricting by requesting precinct changes from their police juries; the Board's cartographer testified that the practice "is not unheard of, it has been done in other places." App. 151a, ¶ 23. Appellee offers no citation, or record support, for the proposition that the Board and Police Jury "nad *never* split precinct lines." Bd. Br. at 3 n.2.

[7] If the Board is trying to imply that the Police Jury could not split existing precincts even to create its own redistricting plan, Bd. Br. at 3 n.2, that is incorrect, since "20 new precincts were created when the 1991 Police Jury plan was drawn," App. 167a, ¶ 70. The parties stipulated that "[p]recinct realignments are a normal practice within Bossier Parish, occurring every three or four years. Bossier Parish has made a number of such precinct realignments within the last ten years." App. 155a, ¶ 38. At the time of trial, the Board's cartographer was working with the Police Jury on precinct consolidations. J.A. 273-275 (Joiner).

Finally, it is not the position of appellants that it was a violation of any law for the Board not to adopt the NAACP plan. The Attorney General's letter denying preclearance explained that "while the School Board was not required to 'adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice.'" App. 86a, quoting App. 235a. The NAACP plan provided the context in which the Board addressed the question of drawing majority-black districts. When confronted with that option, the Board ran to a plan it previously had rejected and "never approached the Police Jury to request precinct changes." App. 84a. The Board never asked the cartographer "to approach the Police Jury to request that the precinct lines be redrawn to enable the creation of majority-black School Board districts." App. 188a, ¶ 128.

B. Traditional Districting Principles. Appellee argues that the NAACP plan subordinates traditional redistricting principles "because it is not compact," Bd. Br. at 3 (footnote omitted), and disavows a stipulation that a reasonably compact majority-black district could be drawn in Bossier City, App. 154a, ¶ 36.[8] This new argument ignores the parties' further stipulation that the majority-black district in Bossier City in the Cooper plans "is an acceptable

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8 Appellee does not attempt to demonstrate that this case presents the "exceptional circumstances" or "manifest injustice" which must be shown to overturn stipulations, particularly after judgment. *See, e.g., Feazell* v. *Tropicana Prods., Inc.*, 819 F.2d 1036, 1040 (11th Cir. 1987) ("[m]atters stipulated to in a pretrial order are binding on the parties unless modified and normally cannot be objected to on appeal"); *Cooperative Servs., Inc.* v. *Dep't of Housing and Urban Dev.*, 562 F.2d 1292, 1294 (D.C. Cir. 1977); *United States* v. *3,788.16 Acres of Land*, 439 F.2d 291, 294-95 (8th Cir. 1971). Appellee's failure to seek relief in the trial court defeats its effort to escape the stipulations here. *See Jauregui* v. *City of Glendale*, 852 F.2d 1128, 1134 (9th Cir. 1988); *Mull* v. *Ford Motor Co.*, 368 F.2d 713, 716 (2d Cir. 1966); *Osborne* v. *United States*, 351 F.2d 111, 120 (8th Cir. 1965).

configuration from the standpoint of district shape." App. 194a, ¶ 150.[9]

Moreover, there is no district court finding in *Knight* v. *McKeithen* that it is impossible to draw a reasonably compact majority-black election district in Bossier City, as Appellee contends. Bd. Br. at 4 n.3. To the contrary, the court in that separate litigation stated from the bench that it was "not comfortable" with the first Cooper plan, but had "not had sufficient time or sufficient evidence presented to convince [it] that some other plan, which complies with Section 2 of the Voting Rights Act, cannot be drawn that will recognize compactness . . . ." J.A. 51.

The Board fails to disclose that, under the statistical test for compactness used by the Board's own cartographer, at least four of the 12 election districts in the Jury plan fail. App. 191a, ¶ 139.[10] The alternative configurations drawn by Mr. Cooper for a second minority district in the relatively sparsely populated northern part of Bossier Parish are "virtually identical in length to the School Board's proposed district configuration and cover[ ] 40 percent less land area." App. 194a, ¶ 149.

Appellee's efforts now to have this Court hold that incumbency was not a problem in the Police Jury plan, Bd. Br. at 48, fly in the face of the D.C. District Court's finding that "[t]he Police Jury plan wreaked havoc with the incumbencies of four of the School Board members. . . ." App. 106a. Two pairs of Board incumbents were pitted

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9 The first Cooper plan was a proposed interim election plan that the Price Appellants provided to the court in *Knight* v. *McKeithen*, No. 94-848-A2 (M.D. La.), as an option when the Board lacked a precleared election plan for the scheduled 1994 elections. App. 193a, ¶ 147. The Board proposed that the Police Jury plan be ordered instead; the court declined to order either. J.A. 51-52.

10 The Board also offers no response to the uncontested fact that the Police Jury plan exceeds the one-person-one-vote standard in Louisiana law. *See* App. 181a-182a, ¶ 109.

against each other and, unsurprisingly, in each pair one member had decided not to run by the time of the testimony below. The citations in Appellee's Brief do not support any inference that the Police Jury plan met the Board's incumbency concerns.

The Board derides "appellants' newly-minted principle" that school board members sought location of schools in their election districts. Bd. Br. at 48. In fact, the parties stipulated the "School Board members . . . are typically concerned with having a public school or schools in each district." App. 151a, ¶ 24.

It is characteristic of the Board's treatment of the facts that it notes the support of the one black Police Juror -- Jerome Darby -- for the Jury plan, Bd. Br. at 44, as if to endorse its fairness to the black community. Mr. Darby testified below that he "was deliberately misled" with regard to the possibility of drawing majority-minority election districts in the parish, and that "[i]f [he] had known then what [he] know[s] now, [he] would have voted against the Police Jury plan." J.A. 135-36. The parties have stipulated that this testimony is true. App. 165a, ¶ 64.

C. Election Results. The Board seeks "judicial notice" of two sets of Board election results under the Police Jury plan. The "1994 election" results[11] were available when the Court remanded this case in 1997, but the Board rejected the invitation to supplement the record. App. 1a, n.1. The D. C. District Court properly refused to take notice of the election results when the Board raised them in a reply brief, concluding that if it were to consider the election results, it "would need more information about them." *Id.* Where a district court refuses to take judicial notice of an adjudicative fact, the appellate court should reject that decision only upon a showing of abuse of discretion. *See O'Bannon* v. *Union Pacific R.R. Co.*, No. 98-2279, 1999 WL 47730 (8th Cir. Jan. 2, 1999); *Waid* v. *Merrill Area Public Schools*, 130 F.3d

[11] What the board calls "1994" elections, Bd. Br. at 5, apparently are those of March and April 1996.

1268, 1272 (7th Cir. 1997); *United States* v. *Mulderig*, 120 F.3d 534, 542 (5th Cir. 1997); *York* v. *American Tel. & Tel. Co.*, 95 F.3d 948, 958 (10th Cir. 1996).

The court below did not abuse its discretion, since the election results had not been subjected to the expert analysis of racial polarization and voter turnout that the parties conducted regarding previous elections. There also was no exploration of special circumstances that bear on their probative value, including the impact of the pending litigation. *See Thornburg* v. *Gingles*, 478 U.S. 30, 76 (1986) (district court properly considered whether "pendency of this very litigation [might have] worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting"); *Solomon* v. *Liberty County Comm'rs*, 166 F.3d 1135, 1143-46 (11th Cir. 1999) (district court's reliance on electoral success of minority candidate during pendency of lawsuit to support finding of no vote dilution was clear error); *see also Clark* v. *Calhoun County*, 21 F.3d 92, 96 (5th Cir. 1994); *City of Carrollton Branch of NAACP* v. *Stallings*, 829 F.2d 1547, 1560 (11th Cir. 1987). The 1998 elections likewise are limited in probative value because they occurred while appellants were seeking this Court's review of the D.C. District Court decision.

On the first appeal to this Court, the Board tried to introduce the 1996 election results through a motion to supplement the record, which this Court denied. *Reno* v. *Bossier Parish Sch. Bd.*, 517 U.S. 1154 (1996). On this appeal, the Board does not attempt a motion but simply asserts the election results as if they were part of the record and considered below (which they were not) and as if election of African-Americans proves that the African-American community has elected its candidates of choice (which it does not). *See Gingles*, 478 U.S. at 76 n.27. The Board's strategic bypass of the trial court, where a factual inquiry could be fully and fairly accomplished, should not be rewarded with judicial notice of the one-sided presentation in its brief.

D. Resistance to Desegregation. The D.C. District Court found that the historical background of the adoption of the Police Jury plan "provides powerful support for the proposition that the Bossier Parish School Board in fact resisted adopting a redistricting plan that would have created majority black districts." App. 7a. The intent proved by the Board's resistance to school desegregation "is a tenacious determination to maintain the status quo." *Id.*[12]

The Board now seeks to overturn what it calls "appellants' suggestion" that the Board violated the desegregation decree when it disbanded a bi-racial committee. Bd. Br. at 49. In fact, it is a finding of fact that it asks this Court to reject:

> Part of [the] history is the school board's resistance to court-ordered desegregation, and particularly its failure to comply with the order of the United States District Court in *Lemon* v. *Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd*, 370 F.2d 847 (5th Cir. 1967), *cert. denied*, 388 U.S. 911 (1967), that it maintain a bi-racial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Stip. ¶ 111.

App. 7a.

The Board also concludes that "[t]here is no evidence that the school's alleged racial imbalance is attributable to the Board's conduct." Bd. Br. at 49. The Board provides no basis to infer that the increasing number of majority-black schools, to which the parties have stipulated (App. 218a, ¶ 241), is due to "demographic factors over which [the Board] has no control. *See Freeman* v. *Pitts*, 503 U.S. 467, 494 (1992)." Bd. Br. at 49. *Freeman* teaches that a school

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12 The Board questions whether "the *status quo*" refers to the Police Jury plan or the 1980's Board plan. Bd. Br. at 16 n.12. In the context of the history of resistance to desegregation, the *status quo* is the ongoing Board reluctance to address the interests of the African-American community.

district seeking unitary status has the burden of demonstrating, among other things, "whether the vestiges of past discrimination ha[ve] been eliminated to the extent practicable." 503 U.S. at 492, quoting *Board of Educ. of Oklahoma City* v. *Dowell*, 498 U.S. 237, 249-50 (1991). The Board sought unitary status in 1979 and was denied. App. 217a, ¶ 239. It accordingly has the ongoing affirmative obligation to "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *School Bd. of New Kent County*, 391 U.S. 430, 437-38 (1968). "[A] critical beginning point" in the analysis when the board next moves for unitary status will be "the degree of racial imbalance in the school district. . . ." *Missouri* v. *Jenkins*, 515 U.S. 70, 87 (1995), quoting *Freeman*, 503 U.S. at 474. How the Board can show that racially identifiable black schools result from demographic patterns while it claims that there are inadequate concentrations of African-American voters to form compact majority-black election districts is an interesting conundrum, but one that will be faced only when the Board again seeks unitary status and is put to its proof.

CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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No. 98-405-ATX Title: Janet Reno, Attorney General, Appellant
v.
Bossier Parish School Board

Docketed: September 4, 1998 Court: United States District Court for the District of Columbia

Vide:
98-406

Entry	Date	Proceedings and Orders
	Sep 4 1998	Statement as to jurisdiction filed. (Response due December 14, 1998)
	Sep 4 1998	Appendix of appellant filed.
	Oct 21 1998	DISTRIBUTED. November 6, 1998
	Oct 27 1998	Response requested. (Due November 27, 1998 - NONE RECEIVED)
	Nov 6 1998	Order extending time to file response to jurisdictional statement until December 14, 1998.
	Dec 14 1998	Motion of appellee Bossier Parish School Board to dismiss or affirm filed. VIDED.
	Dec 29 1998	Reply brief filed. VIDED.
	Dec 29 1998	Reply brief of appellants George Price, et al. filed. VIDED.
	Dec 30 1998	REDISTRIBUTED. January 15, 1999
	Jan 19 1999	REDISTRIBUTED. January 22, 1999
	Jan 22 1999	PROBABLE JURISDICTION NOTED. The case is consolidated with No. 98-406, Price v. Bossier Parish School Board, and a total of one hour is allotted for oral argument. The brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 5, 1999. The brief of appellee is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 2, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, April 16, 1999. Rule 29.2 does not apply. SET FOR ARGUMENT April 26, 1999. **********
	Mar 5 1999	Joint appendix filed. VIDED.
	Mar 5 1999	*Joint appendix in three volumes.
	Mar 5 1999	Brief of appellants George Price, et al. filed. VIDED.
	Mar 5 1999	Brief of the Federal Appellant filed. VIDED.
	Mar 12 1999	CIRCULATED.
	Mar 12 1999	Motion of Solicitor General for divided argument filed.
	Mar 29 1999	Motion of Solicitor General for divided argument GRANTED.
	Apr 2 1999	Brief of appellee Bossier Parish School Board filed. VIDED.
	Apr 5 1999	Letter from counsel for the appellee received and distributed.
	Apr 8 1999	Record filed.
	Apr 16 1999	Reply brief of Federal Appellant filed. VIDED.
	Apr 16 1999	Reply brief of appellants George Price, et al. filed. VIDED.
	Apr 26 1999	ARGUED.
	Jun 24 1999	This case is restored to the calendar for reargument.

No. 98-405-ATX

Entry	Date	Proceedings and Orders
		The parties are directed to file supplemental briefs not to exceed 25 pages addressing the following questions: (1) Does the purpose prong of Sec. 5 of the Voting Rights Act of 1965 extend to a discriminatory but non-retrogressive purpose? and (2) Assuming arguendo that Sec. 5 prohibits the implementation of a districting plan enacted with a discriminatory, non-retrogressive purpose, does the government or the covered juisdiction bear the burden of proof on this issue?
	Jun 28 1999	Briefing shall be simultaneous. Briefs are due on or before Monday, July 26, 1999. Reply briefs, if any, not to exceed 10 pages, are due on or before Wednesday, August 11, 1999. Any brief as amicus curiae is due on or before Monday July 26, 1999.
	Jul 26 1999	Brief of appellants George Price, et al. on reargument filed. VIDED.
	Jul 26 1999	Brief of appellee Bossier Parish School Board on reargument filed. VIDED.
	Jul 26 1999	Brief of appellant Janet Reno, Attorney General on reargument filed. VIDED.
	Jul 29 1999	SET FOR REARGUMENT October 6, 1999.
	Aug 5 1999	Motion of Solicitor General for divided argument filed.
	Aug 11 1999	Reply brief of appellants George Price, et al. on reargument filed. VIDED.
	Aug 11 1999	Reply brief of appellant Federal Appellant on reargument filed. VIDED.
	Aug 11 1999	Reply brief of appellees Bossier Parish School Board on reargument filed. VIDED.
	Aug 11 1999	Reply brief of appellant Federal Appellant on reargument filed. VIDED.
	Aug 17 1999	CIRCULATED.
	Sep 10 1999	Motion of Solicitor General for divided argument GRANTED.
	Oct 6 1999	ARGUED.
	Oct 6 1999	Letter from counsel for Appellants received and Distributed

Supreme Court, U.S.
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JUL 26 1999
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Nos. 98-405, 98-406

In The

Supreme Court of the United States

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

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This brief is submitted pursuant to the Court's order of June 24, 1999, and addresses only those issues identified in the order without repeating the content of appellee's initial brief, which is hereby incorporated by reference.

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SUMMARY OF ARGUMENT

Section 5 and the Fifteenth Amendment are similar in that both prohibit procedures which purposefully abridge the right to vote on account of race. But abridgment, like dilution, is necessarily a relative term. To know whether one's vote (or group voting power) has been abridged, one needs to know what an unabridged vote would be.

In Fifteenth (or Fourteenth) Amendment cases, the procedure allegedly "abridging" minority votes is the existing system being challenged. Thus, abridgment is measured by comparing the existing system to an identified, available alternative that enhances minority voting strength. If there is no alternative that enhances minority voting power, the Court cannot remedy the alleged abridgment by replacing the *status quo* with the enhancing alternative.

In a Section 5 proceeding, however, the voting procedure allegedly abridging minority voting rights is not the *status quo*, but proposed, discrete changes to the *status quo*, and the remedy is to deny the proposed change from taking effect. Thus, abridgment is measured by a comparison of the existing system before it was changed to the system after the change takes effect. If the changed voting system does not abridge minority voting power compared to the *status quo*, the court cannot remedy the alleged abridgment. Section 5 cannot require the covered jurisdiction to adopt a maximizing alternative, but can only prevent the proposed change from taking effect. Accordingly, it would be purposeless or counterproductive to deny proposed voting changes equivalent to or better than the existing system, on the grounds that they do not go far enough in improving the existing system, since such a denial will simply restore the *status quo ante*.

The Court has always recognized this inherent limitation in Section 5 and, consequently, that abridgment under Section 5 is fundamentally different from the abridgment prohibited by the Fifteenth Amendment. The Court has repeatedly held that, while a government abridges voting rights under the Constitution if it intentionally provides less voting power than the available alternative, it abridges voting rights under Section 5

only if it provides less voting power than the existing system, regardless of whether it abridges voting power compared to the optimal alternative. The cases establishing this principle have directly involved the issue of whether the voting change actually abridged minority voting power – *i.e.*, had the "effect" of abridging – rather than whether the covered jurisdiction's purpose was to abridge minority power. But this is truly a distinction without a difference. The covered jurisdiction can have a "purpose" to abridge only if it is attempting to actually abridge, *i.e.*, if its intent is to reduce voting power relative to the *status quo*.

Nor is there any policy reason to stretch Section 5 to reach nonretrogressive changes motivated by a discriminatory purpose. Federal district courts can adjudicate these "discriminatory purpose" issues more even-handedly than a Justice Department devoted to a minority maximization policy, just as they expeditiously adjudicate redistricting litigation in every state not covered by Section 5. A redistricting plan in 2000 moreover, will have a proscribed retrogressive effect if it fails to maintain the same number of majority-minority districts that were created in the 1990s, when the Justice Department insisted upon Section 2 compliance and minority maximization. Accordingly, the "discriminatory purpose" standard will supplement the "nonretrogression" standard only in the extremely rare circumstances where the covered jurisdiction fails to *add* yet another majority-minority district to those created in the 1990s. If the Section 5 court refrains from adjudicating that rare discriminatory purpose issue, this does not suggest any "endorsement" of the alleged Fifteenth Amendment violation. Rather, it suggests only that the parties are seeking to adjudicate that constitutional issue in the wrong court, for it should be adjudicated, as the text of Section 5 itself contemplates, in the same district courts that adjudicate every other constitutional issue. Allowing adjudication of such constitutional issues in district courts would not alter the evidentiary standards for resolving those questions because, as the United States has already conceded in *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997) ("*Bossier I*"), it has the burden to prove unconstitutional purpose in a Section 5 court, just as it would

in "any [constitutional] challenge" in district court. *Bossier I*, App. 69a (Stevens, J., dissenting in part and concurring in part).[1] Conversely, requiring a covered jurisdiction to, in essence, sue itself under the Constitution and disprove the validity of hypothetical alternatives invented by Justice Department lawyers would constitute a severe, constitutionally problematic, transfer of sovereign power from state governments to the federal bureaucracy.

ARGUMENT

I. SECTION 5'S STRUCTURE, PURPOSE, AND LANGUAGE DEMONSTRATE THAT IT DOES NOT REACH NONRETROGRESSIVE PURPOSE.

It is common ground that Section 5 prohibits selecting a new voting procedure for the purpose of reducing existing minority voting power. In such cases, voting power under the proposed change is intentionally "abridg[ed]" relative to the existing system. 42 U.S.C. § 1973c. In appellee's view, this standard differs from the Fifteenth Amendment's prohibition in one respect. The Fifteenth Amendment also prohibits selection of a voting procedure for the purpose of reducing minority voting rights compared to that which would be available under a hypothetical, proposed alternative. In such cases, voting rights have been "abridg[ed]" under the Fifteenth Amendment because of the failure to enhance minority strength to the level that would have existed absent racial considerations. Thus, while perpetuation of a discriminatory *status quo* for racial reasons violates the Constitution's prohibition of a racially discriminatory purpose, it does not violate Section 5's prohibition against a racially retrogressive purpose.

The sum total of appellants' contrary argument is that a voting change which intentionally perpetuates a discriminatory *status quo* necessarily constitutes an impermissible "purpose"

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[1] In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statements in this appeal, to the United States' brief ("U.S. Br."), to the United States' and appellant-intervenors' reply briefs ("U.S. Reply Br."), ("A-I Reply Br."), and to the appellee's brief ("Initial Br.").

to "abridg[e]" under Section 5 because it violates the Fifteenth Amendment's prohibition of purposeful abridgment. U.S. Br. at 19-20. Although that position has a certain superficial appeal as a policy matter, the notion that Section 5 prohibits deliberate perpetuation of the *status quo* is fundamentally at odds with the limited structure, remedial scope and historical purpose of this unique statute, as this Court has repeatedly emphasized in a series of cases holding that the "purpose of § 5 was to prohibit *only* retrogressive changes." *City of Lockhart v. United States*, 460 U.S. 125, 134 n.10 (1983) (emphasis added). *See* Initial Br. at 17 n.13.

Specifically, appellants' attempt to analogize the abridgment prohibited by Section 5 to that prohibited by the Fifteenth Amendment ignores the fundamental difference between the purpose and scope of the two provisions. The Fifteenth Amendment is designed to displace an existing *status quo* because it is discriminatory, and thus abridgment is obviously not measured by reference to the *status quo* being attacked, but necessarily by reference to a hypothetical, alternative improvement that was rejected for racial reasons. By its very structure, however, Section 5 is necessarily designed to prohibit dilutive *changes* to the *status quo*, and thus abridgment is necessarily measured by reference to the *status quo* before it was changed. As this Court has already noted in *Bossier I*, appellants' procrustean effort to transport the abridgment concepts from litigation involving attacks on the *status quo* to the Section 5 context is impermissible because it incorrectly "shift[s] the focus of § 5 from nonretrogression to vote dilution, and . . . change[s] the § 5 benchmark from a jurisdiction's existing plan to a hypothetical, undiluted plan." App. 37a-38a. Acceptance of appellants' view of Section 5 would render *Bossier I* and *Beer v. United States*, 425 U.S. 130 (1975), practical nullities – their limitation of "effect" to retrogression would be effectively swallowed by appellants' free-floating "purpose" inquiry.

First, and most obviously, Section 5 is simply incapable of remedying or otherwise invalidating a nonretrogressive, purposefully discriminatory change in voting. Section 5 "applies only to proposed *changes*" to the *status quo*, and its only

remedy is to *deny* the proposed change, thus restoring the *status quo ante*. *Beer*, 425 U.S. at 138 (emphasis added). Accordingly, in fundamental contrast to the Fifteenth Amendment, it is simply not designed or suited to prohibit or remedy voting changes which perpetuate (or ameliorate) the *status quo*, even if that *status quo* is itself discriminatory. To repeat the illustrative example used at oral argument, if a polling place is currently six blocks from a minority neighborhood and a covered jurisdiction proposes to move it five blocks from that neighborhood, but rejects a better alternative site four blocks away for purely racial reasons, Section 5 simply cannot remedy this nonretrogressive, purposefully discriminatory change. Rather, it can only deny the proposal to move the polling place five blocks from minority voters, thus returning the polling place to its originally inaccessible six block location. The same would be true of other proposed changes in voting procedures which affect the weight or casting of one's vote, such as switching from an at-large to a single-member scheme. In all such circumstances, as the Court recognized in *Beer*, any ameliorative change, even if not the optimal improvement, must pass Section 5 muster because denial of an ameliorative change has the perverse result of putting minorities in a worse position than they would be in if preclearance were granted. *Beer*, 425 U.S. at 141. As the Court confirmed in *Lockhart*, denying preclearance to a change which maintains, rather than enhances, the *status quo* is similarly purposeless since it does not in any way benefit minority voters and simply restores the allegedly discriminatory *status quo*. *Lockhart*, 460 U.S. at 134-35 & n.10.

Thus, because of this fundamental limitation inherent in Section 5 – it deals only with changes to the *status quo* and its only remedy is to restore the *status quo ante* – it cannot improve or eradicate a discriminatory *status quo*. That being so, it simply makes no sense to interpret Section 5 to invalidate the deliberate perpetuation (or less-than-complete amelioration) of the existing system. If the *status quo* is discriminatory, it accomplishes nothing to restore it by denying the change and, if the *status quo* is not discriminatory, any

perpetuation (or improvement) of that nondiscriminatory regime is also nondiscriminatory. If the underlying electoral system is itself infected with racially discriminatory animus, this underlying defect must be cured by a legal challenge to that *status quo* – *i.e.*, a Section 2 or Fifteenth Amendment challenge. Such fundamental alteration to the *status quo* cannot be accomplished by a statute that deals only with changes to parts of the existing system. This is particularly true since the unconstitutional vote dilution inquiry requires evaluation of the *entire* electoral and political process system, which is impossible to do when one is examining a discrete change to that underlying system. *See White v. Regester*, 412 U.S. 755, 766 (1973).

In short, the Fifteenth Amendment is designed to eradicate a discriminatory *status quo* while Section 5 is a purely reactive statute that cannot even consider an unchanged *status quo* or require adoption of enhancing alternatives. For this reason, the Fifteenth Amendment prohibits racially-motivated rejection of alternatives which enhance minority voting power above the *status quo*, but Section 5 does not. In other words, the "abridgment" proscribed by Section 5 is narrower than the "abridgment" proscribed by the Fifteenth Amendment for the same reason that the dilutive "effect" prohibited by Section 5 is narrower than the dilutive "result" prohibited by Section 2, even though "effect" and "result" are synonyms. The function of Section 2, like the Fifteenth Amendment, is to affirmatively uproot a discriminatory *status quo* and therefore necessarily measures vote abridgment and dilution in relation to an improvement to that *status quo*. But since Section 5 is intended to prohibit discriminatory changes to the *status quo*, it measures vote abridgment and dilution in relation to the existing system. *See Beer*, 425 U.S. at 141 (A nonretrogressive change "can hardly have the 'effect' of *diluting* or *abridging* the right to vote on account of race within the meaning of § 5.") (emphasis added).

Thus, in light of the fundamentally "different evils" at which they are addressed, and the fundamentally different scope of their remedial procedures, Section 5 is not and cannot be coextensive with the Constitution. *Bossier I*, App.

33a. Section 5 goes farther than the Constitution in prohibiting any regression from the *status quo*, while it does not go as far as the Constitution in prohibiting a failure to improve the *status quo*. Section 5 prohibits any act which has the "effect" of reducing extant minority voting rights, even if the reason for such reduction is entirely legitimate, while the Constitution will prohibit such a retrenchment only if it is motivated by an invidious purpose. Similarly, Section 5 covers only changes to the *status quo* in certain jurisdictions, while the Constitution reaches the unchanged *status quo* in all states. In addition, under either interpretation of Section 5's purpose prong, it goes farther than the Fifteenth Amendment because it puts the burden of proof on the covered jurisdiction and because it unequivocally reaches vote *dilution* mechanisms such as redistricting plans, while the Fifteenth Amendment was thought in 1982 to reach only direct restrictions on access to the ballot. Initial Br. at 26-27. Accordingly, it is clear that the Fifteenth Amendment and Section 5 cannot be coterminous and that an interpretation of Section 5 which reaches only retrogressive changes nonetheless goes as far as – indeed, farther than – the Fifteenth Amendment.

In addition, it is clear that the original purpose and understanding of Section 5, within the broad framework of the Voting Rights Act, was to prevent "backsliding" from the improvements to the discriminatory *status quo* that would be caused by the Act's other provisions. Congress recognized that Section 5 was inherently unequipped to affirmatively improve the existing electoral system. That task was to be accomplished by the suspension of poll taxes, discriminatory "tests and devices" and Section 2 lawsuits to eliminate other dilutive measures. 42 U.S.C. §§ 1973b, 1973h. In contrast, Section 5's "limited substantive goal" was simply ensuring that the fragile gains created by the ban on tests – "the principal method used to bar Negroes from the polls" – would not be undone by retrogressive changes in other voting procedures. *Bush v. Vera*, 517 U.S. 952, 982 (1996); *South Carolina v. Katzenbach*, 383 U.S. 301, 310 (1966). As the Court noted in *South Carolina*, other voting procedures, besides tests and devices, could be modified by recalcitrant

southern jurisdictions to disenfranchise the black voters recently enfranchised through the "tests and devices" ban, thus "perpetuating" the very discriminatory system that the ban was designed to eradicate. *Id.* at 335. Thus, even though voting procedures other than tests and devices had not been found to be discriminatory by Congress (and often were not since they were designed for an electorate that had already excluded black voters through the tests and devices), covered jurisdictions could nonetheless be forced to preclear them since they could potentially be modified to accomplish the disenfranchisement previously done through literary tests and the like. As the Court put it, new voting rules could be devised "to evade the remedies for voting discrimination contained in the Act itself," *i.e.*, the ban on discriminatory tests and devices. *Id.* This in no way suggests, as the United States would have it, that maintenance of voting procedures *other than* the banned tests and devices would offend Section 5, since such maintenance could not "undo" or "defeat" the minor fragile gains caused by the Voting Rights Act and since, as noted, Section 5 could neither address nor remedy racially-motivated maintenance of the *status quo*. *Beer*, 425 U.S. at 140-41 (quoting H.R. Rep. No. 91-397, at 8 (1970); S. Rep. No. 94-295, at 19 (1975)).

That is why the Court has repeatedly emphasized that Section 5 is designed solely to "freeze election procedures."[2] Although such freezing cannot, by definition, improve an existing situation, it did prevent southern jurisdictions from imposing regressive changes that accomplished the same discrimination that had previously been accomplished by those devices prohibited by other parts of the Act. Consequently, the "purpose of § 5 has always been to ensure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities" from the *status quo*, but not to invalidate changes on the ground that they

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[2] *Beer*, 425 U.S. at 140 (quoting H.R. Rep. No. 94-196, at 57-58 (1975)); *Miller v. Johnson*, 515 U.S. 900, 925-27 (1995); *Bossier I*, App. 35a.

failed to enhance the *status quo* for racial reasons. *Beer*, 425 U.S. at 141.[3]

Accordingly, the Court has repeatedly held that, under Section 5, "abridge" means "retrogress," *i.e.*, a voting change does not abridge the right to vote unless it renders minority voting more difficult or less valuable than it was previously. Initial Br. at 16-18. Thus, in *Lockhart*, the Court held that a jurisdiction's proposal to use at-large and numbered post-systems – two often-used dilutive devices – was "entitled to § 5 pre-clearance" "[s]ince the new plan did not increase the degree of discrimination against blacks." 460 U.S. at 134. This was so even though the "new plan may have remained discriminatory," and "[m]inorities are in the same position every year that they used to be in every other year." *Id.* at 134, 135.

Thus, *Lockhart* held that perpetuation of the potentially discriminatory *status quo* did not "have the effect of denying or abridging the right to vote on account of race. . . . " *Id.* at 136. Since a voting change cannot have the effect of abridging voting rights unless it causes retrogression, it inexorably follows that it cannot have the purpose of abridging voting rights unless it is intended to cause that retrogression.[4] Appellants are

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[3] *See also Lockhart*, 460 U.S. at 134 n.10 ("[T]he purpose of § 5 was to prohibit only retrogressive changes."); *Beer*, 425 U.S. at 143 (White, J., dissenting) ("I cannot agree [with the Court] that § 5 . . . reaches only those changes in election procedures that are more burdensome to the complaining minority than pre-existing procedures."); *City of Richmond v. United States*, 422 U.S. 358, 388 (1975) (Brennan, J., dissenting) ("The fundamental objective of § 5 [is] the protection of *present* levels of voting effectiveness of the black population.") (emphasis in original); *Miller*, 515 U.S. at 926.

[4] The Justice Department's contrary conclusion in its Section 5 guidelines is entitled to no deference for the same reason that *Bossier I* gave no deference to the Department's position that preclearance may be denied for a Section 2 violation. The Department's Section 2 argument in *Bossier I* was premised on an interpretation of Section 5's language that was reasonable if one ignored Section 5's limited structure and purpose (*i.e.*, Section 5's "effect" is analogous to Section 2's "result"), and the argument was expressly supported by S. Rep. No. 417, at 12 n.31 (1982),

utterly unable to offer any explanation of how the word "abridge" dramatically shifts meaning within the same sentence, depending on whether it modifies "purpose" or "effect."[5] Thus, their interpretation of Section 5 is facially invalid because it is contrary to the plain statutory language and the Court's consistent interpretation of that language. Initial Br. at 16-18.

Appellants nevertheless argue that construing "abridge" to mean retrogression when modifying purpose, as it does when modifying effect, would impermissibly render Section 5's "purpose" prong "almost superfluous." U.S. Reply Br. at 8-9. This is neither true nor an argument in favor of construing Section 5 to reach nonretrogressive changes. In the first place, under the retrogressive purpose standard, Section 5's "purpose" prong would independently invalidate changes that are permitted under the retrogressive "effect" standard in the important annexation context. Under *City of Richmond v. United States*, 422 U.S. 358 (1975), an annexation which reduces the previous

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as well as, by the alleged policy against granting preclearance to voting procedures that unlawfully diluted minority voting strength under the *White v. Regester* standard. U.S. Br. in *Bossier I*, at 33-37. The Court nevertheless refused to grant deference to the Attorney General's guidelines because that interpretation of Section 5 (although reasonable in isolation) was inconsistent with the logic of the *Beer* retrogression principle and impermissibly shifted Section 5's focus from the limited retrogression issue to the broader question of whether a change unlawfully dilutes minority voting strength compared to a hypothetical alternative. *Bossier I*, App. 37a-38a. Here, the argument that "abridge" does not mean retrogression when it modifies "purpose" is even more directly at odds with the *Beer* retrogression principle and would also impermissibly expand the Section 5 inquiry to focus on abridgment relative to a hypothetical alternative, rather than to the existing system. *See also* Initial Br. at 31 n.24.

[5] The private appellants, although not the United States, note that "purpose" in Section 5 is phrased in the present tense, while "effect" is purportedly phrased in the future tense. A-I Reply Br. at 2. Understandably, after making that interesting linguistic observation, appellants make no attempt to explain how this "distinction" in any way affects or undermines the conclusion that because "abridge" means retrogression in modifying "effect," it must also mean retrogression in modifying "purpose."

black voting population, and thus has a retrogressive effect, is nevertheless permissible under Section 5 unless the purpose of the annexation is to cause such retrogression, rather than to further a legitimate goal. 422 U.S. at 375-78. Accordingly, a voting annexation which satisfies Section 5's "effect" prong would nevertheless violate the statute's "purpose" prong, thus establishing that a retrogressive purpose standard would have significance distinct from the prohibition on retrogressive effect.

More fundamentally, however, it is hardly surprising or anomalous that a statutory prohibition against an illicit purpose fails to significantly expand a corresponding prohibition against an impermissible effect. This is true of every civil rights law which reaches both purpose and effect – such as Section 2 and Title VII – and is inherent in the fact that a prohibition against effect is almost inevitably broader than a proscription against an intent to accomplish that effect. Most obviously, Section 2 prohibits both an unintentional dilutive effect ("result") and a purposeful dilutive effect. *Thornburg v. Gingles*, 478 U.S. 30, 43-44 (1986). That being so, Section 2's prohibition against a dilutive purpose is largely unnecessary and, indeed, only applies to the rare defendant who incompetently attempts to dilute minority voting strength but does not accomplish it. This simply reflects the fact that, as everyone in Congress understood in 1982, purpose follows effect and a prohibition against an impermissible effect is broader than a prohibition against purpose. S. Rep. No. 417, at 15-39 (1982). Interpreting Section 2 to prohibit both a discriminatory purpose and effect is therefore fully consistent with the statutory construction principle of avoiding unnecessary redundance if reasonable. In contrast, it is appellants who seek the anomalous rule – contrary to English usage, Section 2 and Title VII – that purpose is broader than, and does not follow, effect. It attributes to Congress the schizophrenic policy of affirmatively deciding to grant preclearance to voting changes that actually perpetuate the *status quo*, even if the system "remains discriminatory," but simultaneously requiring denial of preclearance simply because the covered jurisdiction intended precisely that effect. Since it must be presumed that the federal legislature is

minimally rational, however, it is clear that because Congress did not perceive the perpetuation of even a discriminatory *status quo* as an evil result forbidden by Section 5, it could not logically have perceived an intent to perpetuate the *status quo* as an evil purpose forbidden by Section 5. If the result is legitimate, it is difficult to understand why it becomes illegitimate simply because it is intended.

1. Although appellants cannot reconcile their interpretation with the plain language, "limited substantive goal," remedial structure or historical genesis of Section 5, they nevertheless insist that Section 5 simply must be so interpreted to avoid the unthinkable policy result of having the Attorney General place her stamp of approval on voting changes adopted for racial, and therefore unconstitutional, motives. *Bush*, 517 U.S. at 982; U.S. Br. at 20; U.S. Reply Br. at 4. Even if this Court were free to rewrite statutes to implement policy goals different from those that Congress embodied in the statute, appellants' "parade of horribles" has absolutely no relevance in the 1990s and thus their desired judicial revision of Section 5 is unsupported by even a coherent policy argument. *But see Brogan v. United States*, 522 U.S. 398, 408 (1998) ("Courts may not create their own limitations on legislation, no matter how alluring the policy arguments for doing so. . . . "). Contrary to appellants' anachronistic (and facially erroneous) hypotheticals,[6] interpreting Section 5 to reach only

[6] The United States asserts that, if "abridge" in Section 5 means retrogression from the existing system, then Section 5 would not prohibit towns like Tuskegee, Alabama from gerrymandering their municipal boundaries to exclude black voters, if the town had previously prohibited blacks from voting. U.S. Reply Br. at 4. *Cf. Gomillion v. Lightfoot*, 364 U.S. 339 (1960). This is facially wrong for two reasons. First, regardless of whether "abridge" means retrogression or something more, Section 5 nevertheless prohibits any change for the purpose of "*denying* . . . the right to vote on account of race," 42 U.S.C. § 1973c, and any *Gomillion*-like exclusion of blacks from a municipality is precisely intended to create such a denial. Second, any complete denial of minorities' right to vote would, by definition, constitute a reduction of their " 'theretofore enjoyed voting rights,' " and would therefore be retrogressive. *Richmond*, 422 U.S. at 379

retrogressive changes cannot, in the 1990s, possibly result in either perpetuating a discriminatory *status quo* or any judicial tolerance of intentionally discriminatory voting changes. Rather, the only policy issue is whether such "discriminatory purpose" issues should be adjudicated by the traditional district courts that resolve such constitutional questions in every other context or, rather, by a limited-purpose District of Columbia court and/or an unreviewable Justice Department bureaucracy that has a track record of equating discriminatory purpose with any failure to maximize minority voting strength to the greatest extent possible. Initial Br. at 41-42.

First, changes which perpetuate the *status quo* are discriminatory only if the *status quo* being so extended is itself discriminatory. The *status quo* for any redistricting plan henceforth submitted for preclearance, however, is necessarily nondiscriminatory since the Justice Department (or the Section 5 court) has affirmatively found it to be free of both discriminatory purpose and effect at least two, and usually three, times in the 1970s, 80s and 90s. As this Court has noted, preclearance was forthcoming in the 1990s only if the Department found that it complied with the "results" standard of Section 2 and the jurisdiction created any reasonably possible majority-minority district. *Miller v. Johnson*, 515 U.S. 900, 912, 923-27 (1995); *Bush*, 517 U.S. at 902; *Shaw v. Hunt*, 517 U.S. 899,

(quoting *Gomillion*, 364 U.S. at 347). While towns like Tuskegee, Alabama – the defendant in *Gomillion* – might have made it nearly impossible for blacks to vote in the 1960s, a voting change making it literally impossible would nonetheless be retrogressive. The United States' related assertion that an all-white jurisdiction could pass a law denying minorities the right to vote is patently erroneous for the same reason – any such law would be both a denial and retrogressive. The purpose of such a change would be to reduce minority voting rights relative to those which existed before the change, and thus would be retrogressive. The fact that the town making the change is all white does not exempt it from Section 5 or alter this retrogression analysis since, as discussed below, a jurisdiction may possess a retrogressive purpose with respect to future black voters, as well as to current black voters. *See infra* pp. 21-22; *City of Pleasant Grove v. United States*, 479 U.S. 462, 471 (1987).

912-13 (1996). Thus, in striking contrast to the 1970s, the retrogression benchmark in the 2000 redistricting cycle is set extraordinarily high. Simply maintaining that minority maximization *status quo* under a nonretrogression principle will not perpetuate any *discriminatory* redistricting plans. It will maintain, rather, a system which maximizes minority voting strength to the extent constitutionally permissible (and sometimes beyond what is permissible). It is extraordinarily implausible that a submitting jurisdiction, except in the rarest of cases, could avoid retrogressing from the race-conscious redistricting required in the 1990s and still unconstitutionally dilute minority voting strength. The discriminatory purpose inquiry will add to the nonretrogression principle, and come into play, only in those rare cases where the covered jurisdiction has failed to add yet another majority-minority district to those existing in the 1990s, and the Justice Department alleges that this failure is motivated by racial animus.

In light of this, there is simply no reason to stretch Section 5's jurisdiction and substantive standard in order to adjudicate these rare hypotheticals. First, the traditional district courts are better situated to conduct the "intensely local appraisal" required for analyzing the racial purpose of voting plans and, as discussed below, the United States will have the burden to establish discriminatory purpose in either those district courts or the Section 5 court. *White v. Regester*, 412 U.S. at 769-70; *see infra* p. 25. Conversely, preclearing such redistricting plans in no way endorses any potential Fifteenth Amendment violation, any more than preclearance endorses a voting change that violates Section 2 or the First Amendment. (Indeed, under appellants' theory, Section 5 courts must adjudicate the redistricting plan's compliance with the *Fourteenth* Amendment's one-person one-vote principle and *Shaw's* racial neutrality requirement to avoid "endorsing" such constitutional violations.) But this Court did not give a seal of approval to the voting changes in *Lockhart* when it held that the new at-large and numbered-post systems were "entitled to § 5 preclearance," even though such devices often were used to intentionally dilute minority voting strength and the electoral

system "remained discriminatory." 460 U.S. at 134. Preclearance simply reflects the fact that *Section 5* objections are not appropriate for changes that satisfy *Section 5*, because the District of Columbia Court and the Attorney General have no jurisdiction to resolve whether the proposed change violates other constitutional or federal voting rights guarantees.[7] The fact that the United States Court of Federal Claims (the other special, limited-purpose court in the District of Columbia) cannot adjudicate due process violations hardly "endorses" such unconstitutional deprivations of property. *See South Carolina*, 383 U.S. at 331-32 (comparing Section 5 courts to Claims Court). *See, e.g., LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995). It simply recognizes that the Court of Federal Claims has no jurisdiction over, and has no power to remedy, such violations, just as the District of Columbia Section 5 court is without jurisdiction and the power to remedy a nonretrogressive Fifteenth Amendment violation.

Indeed, as this Court has noted, Section 5 itself expressly contemplates that such constitutional issues will be adjudicated in " 'traditional suits attacking [the voting procedure's] constitutionality' " in a " 'subsequent action to enjoin enforcement.' " *Shaw v. Reno*, 509 U.S. 630, 654 (1993) (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 549-50 (1969)). If unconstitutional discriminatory purpose is to be adjudicated in *both* the Section 5 and subsequent district court litigation, this creates the distinct possibility of duplicative litigation and inconsistent judgments. Initial Br. at 36.

In addition, while interpreting Section 5 pursuant to its plain language will not in any way permit a constitutional violation to be unremedied, expanding the Justice Department's Section 5 jurisdiction to encompass "discriminatory purpose" will encourage or coerce covered jurisdictions to *commit* constitutional violations. As this Court has recognized,

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[7] Interpreting the jurisdiction of Section 5 courts to extend only to Section 5 issues is particularly appropriate because the Court has "long held that congressional enactments providing for the convening of three-judge courts must be strictly construed." *Allen v. State Bd. of Elections*, 393 U.S. 544, 561 (1969).

if the covered jurisdiction fails to "subordinate traditional [re]districting principles" to create a majority-minority district hypothesized by Justice Department lawyers, the Department will find "a discriminatory purpose," but if it acquiesces to the Department's coerced racial gerrymander, it will violate the rights of nonminorities under *Shaw*. *Bush*, 517 U.S. at 979; Initial Br. at 42. Placing covered jurisdictions in the position of satisfying such inconsistent demands greatly exacerbates the already "substantial federalism costs" of Section 5 and will lead yet again to another unending cycle of redistricting litigation of the sort that bedeviled such jurisdictions during the 1990s. *Lopez v. Monterey County*, 119 S. Ct. 693, 703 (1999) (internal quotations omitted). In short, while there is no realistic fear that meritorious discriminatory purpose claims will go unremedied if Section 5 is given a properly limited construction, there is a very real chance that, under appellants' expansive view, discriminatory purpose will be erroneously found by the Justice Department and the fear of such a finding will force covered jurisdictions to violate the constitutional rights of nonminorities.

For all these reasons, appellants' proposed interpretation stretches Section 5 far beyond its intended scope and works a major, and constitutionally suspect, intrusion on State sovereignty that, at a minimum, should not be inferred absent the clearest possible direction from Congress. While covered jurisdictions have a unique procedural burden under either interpretation of Section 5, the retrogression principle at least is a focused substantive inquiry and gives some deference to the State's policies concerning its electoral and political processes. Under the retrogression principle, the State is essentially prohibited from departing from its prior electoral practices in a manner which disadvantages minority voters – thus "freezing" the State's prior choices on how to organize its system of self-governance. While this is a serious intrusion on State sovereignty, it at least defers to the State's *own* prior policy choices concerning voting and elective office. No federal court or bureaucrat *imposes* on the State a "nondiscriminatory benchmark" practice – "because in a § 5 case the question of an alternative benchmark never arises – the benchmark is

simply the former practice employed by the jurisdiction seeking approval of a change." *Holder v. Hall*, 512 U.S. 874, 888 (1994) (O'Connor, J., concurring in part and concurring in the judgment). Under appellants' free-floating "purpose" inquiry, in contrast, Justice Department lawyers or Section 5 "courts must *choose* an objectively reasonable alternative practice as a benchmark for the [dilutive purpose] comparison." *Id.* at 887 (emphasis added). The covered jurisdiction thus has the burden of demonstrating the objective, race-neutral superiority of its change over the myriad alternative possibilities that Justice Department lawyers proffer as preferred alternatives that the State "should have" chosen. This "wide range of possibilities makes the choice inherently standardless" and subject to unending manipulation by the Justice Department bureaucracy – particularly with respect to choices such as which of a multitude of possible redistricting plans is the "best" one. *Id.* at 885 (opinion of Kennedy, J.) (quoting opinion of O'Connor, J., concurring in part and concurring in judgment).

As this Court has recently noted in an analogous (albeit far less intrusive) context, "[w]hen the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government." *Alden v. Maine*, No. 98-436, 1999 U.S. LEXIS 4374, at *78 (U.S. June 23, 1999). Thus, at some point, investing federal courts and government lawyers with such standardless power impermissibly intrudes on the "essential sovereignty of the States" that is guaranteed by our "constitutional system." *Id.* at *76. *See also Miller*, 515 U.S. at 927. At an absolute minimum, the Court should not adopt an interpretation of Section 5 which so dramatically "alter[s] the usual constitutional balance between the States and the Federal Government," unless Congress has made "its intention to do so unmistakably clear in the language of the statute." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (internal quotations omitted). *Gregory v. Ashcroft*, 501 U.S. 452, 460, 470 (1991).

2. Not only do this Court's precedents not require interpreting Section 5 to reach nonretrogressive purpose, they strongly support the opposite result. The logic of both *Beer* and

Bossier I all but compel the conclusion that Section 5's "purpose," like Section 5's "effect," reaches only retrogression. Any other reading raises all the concerns that animated the Court in *Beer* and *Bossier I* and renders both of those decisions devoid of practical significance.

Notwithstanding this, appellants seem to make the extraordinary suggestion that *Beer*, the seminal case establishing that the "purpose of § 5 was to prohibit only retrogressive changes" which reduced the *status quo*, actually ruled that the "purpose" prong of Section 5 also prohibited nonretrogressive changes if they are intended to maintain the *status quo*. *Lockhart*, 460 U.S. at 134 n.10 (citing *Beer*, 425 U.S. at 141); U.S. Reply Br. at 7. But, of course, *Beer* did not in any way interpret the "purpose" provision of Section 5 or suggest that it had a different reach than the "effect" prong – and no one, including the United States, has ever so interpreted that opinion. As the United States elsewhere recognizes, the "purpose" provision of Section 5 was not at issue in *Beer*, and *Beer* never mentions it, much less suggests that it has an entirely different meaning than the retrogressive "effect" standard. U.S. Br. at 29; *Beer*, 425 U.S. at 139.

To be sure, as both the majority and dissenting opinions in *Bossier I* recognized, *Beer* noted that a change which satisfies Section 5's nonretrogression standard could "nonetheless continue so to discriminate on the basis of race or color as to be *unconstitutional*." *Beer*, 425 U.S. at 142 n.14 (emphasis added). No one has interpreted this language to suggest that *Section 5* prohibits nonretrogressive changes, but only to suggest, at most, that a change which satisfies the less demanding standard of Section 5 may nonetheless violate the more demanding constitutional standard. *See, e.g., Bossier I*, App. 71a (Stevens, J., dissenting in part and concurring in part); App. 38a-39a. This, of course, *supports* our assertion that while the Constitution reaches nonretrogressive discriminatory voting procedures, Section 5 does not. Appellants nevertheless seem to suggest that Section 5 *incorporates* the Constitution's substantive prohibition against nonretrogressive discriminatory changes, on the basis of the following passage from *Beer*: "[A]n ameliorative plan 'cannot violate § 5 *unless* [it] so

discriminates on the basis of race or color as to violate the Constitution.' " U.S. Reply Br. at 8 (quoting *Beer*, 425 U.S. at 141) (emphasis added by U.S. Brief). This excerpt, however, in no way suggests that Section 5 and the Constitution are coterminous but, rather, merely confirms again that the Constitution is a different, more demanding standard than Section 5.[8]

We fully agree that a jurisdiction cannot violate Section 5 "*unless*" it violates the Constitution, because a constitutional violation is a necessary, albeit not sufficient, basis for establishing a Section 5 purpose violation. A jurisdiction cannot violate the Constitution *unless* it violates Section 2, because Section 2 is a different, more demanding standard than the Constitution. This does not mean that a government violates the Constitution *if* it violates Section 2 or that the Constitution and Section 2 are coextensive. By the same token, the *Beer* excerpt does not suggest that a jurisdiction violates Section 5 if it violates the Constitution, but only that the more demanding standard in the Constitution is a necessary prerequisite to establishing a Section 5 violation, just as a Section 2 violation

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[8] This sentence in *Beer* has never been construed as suggesting that the "purpose" prohibited by Section 5 is the same as an unconstitutional purpose. To the contrary, the *Bossier I* dissenting opinion argued that this same passage from *Beer* suggested Section 5 preclearance could be denied for changes which clearly "violated some *other* federal law," including not just violations of the "Constitution," but also laws, like amended Section 2, that incorporated the "standard established in *White v. Regester*." *Bossier I*, App. 70a-72a (Stevens, J., dissenting in part and concurring in part) (emphasis added). The relevant point here is that the dissenting opinion, like the majority opinion, recognized that any denial of preclearance to a nonretrogressive change was premised not on a Section 5 violation, but on a violation of an exogenous command contained in Section 2 or the Constitution. The 1982 legislative history similarly interpreted *Beer* to authorize a preclearance denial for a *constitutional* violation, and also thought that Section 2 could supply an additional, exogenous ground for denying preclearance. S. Rep. No. 417, at 12 n.31 (1982). But, again, nothing in the legislative history suggests any belief that *Beer* had interpreted the *Section 5* "purpose" standard to reach nonretrogressive changes or to incorporate the Constitution's purpose standard.

is a threshold requirement to even allege a potential constitutional violation. As we explained at length in our prior brief, the Court in *Shaw v. Reno* subsequently eliminated any ambiguity on this point. There, the Court interpreted the *Beer* dictum to simply suggest "that a reapportionment plan that satisfies Section 5 still may be enjoined as unconstitutional" and further clarified that any such constitutional violation must be established in a "subsequent action to enjoin enforcement," rather than the Section 5 proceeding itself. 509 U.S. at 654 (internal quotations omitted); Initial Br. at 35. The subsequent action is required because, as we previously explained, the Section 5 court simply has no jurisdiction over constitutional claims (or any claim other than Section 5) and Section 5 expressly contemplates such a subsequent constitutional challenge. *See supra* p. 16; Initial Br. at 36.

Similarly, the Court's decision in *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), never mentioned, and did not implicate, the issue of whether Section 5 reached only a discriminatory retrogressive purpose or also reached a discriminatory nonretrogressive purpose. Rather, it simply held that future black voters, as well as current black voters, were protected against the retrogressive discriminatory purpose that *Richmond* had made clear violated Section 5. If any of the thirty-two black residents of Pleasant Grove had registered to vote before its discriminatory annexations, there is no question that those annexations of white-occupied land would be a straightforward violation of the retrogression standard since the black voting percentage after the change would have been less than that existing before the change. The *Pleasant Grove* majority simply held that this result was not altered because none had registered or because new black voters entered after the time of the annexation. 479 U.S. at 465 n.2. If a covered jurisdiction severely reduced polling place hours the day after a black voter moved into town, this plainly has the retrogressive purpose of denying the voting rights the black voter enjoyed before the change. *Pleasant Grove* correctly held that the retrogressive purpose prong also prohibits a jurisdiction from so reducing voting hours the day *before* a black voter is expected to move in. This holding in no way suggests that

Section 5 reaches a nonretrogressive purpose, or that Section 5's "purpose" is broader than "effect," and any such suggestion is contradicted by the Court's explicit finding that Section 5 purpose *follows* effect. Initial Br. at 29.[9]

II. THE UNITED STATES BEARS THE BURDEN OF PROVING THAT A COVERED JURISDICTION HAS A NONRETROGRESSIVE DISCRIMINATORY PURPOSE.

As noted, the only identified or conceivable basis for contending that preclearance can be denied to a nonretrogressive change is that Section 5 incorporates the constitutional standard or that a constitutional violation forms a discrete basis for denying preclearance. *See, e.g., Bossier I*, App. 61a (Breyer, J., concurring in part and concurring in the judgment) ("Section 5 prohibits a covered state from making changes in its voting practices and procedures where those changes have

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[9] The court's summary affirmance in *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd* 459 U.S. 1166 (1983), just one month before the *Lockhart* decision, plainly did not resolve the question that the Court in *Bossier I* left open for resolution. This Court has repeatedly made clear that "[s]ummary actions . . . should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). *See also Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 180-81 (1979). Of course, interpreting the *Busbee* affirmance as holding that Section 5 reaches nonretrogressive changes would surely break new ground by expanding – indeed, contradicting – the holdings in *Beer* and *Lockhart* that Section 5 reached only retrogressive changes. There was certainly no established principle that Section 5 reached nonretrogressive changes when *Busbee* was affirmed. Moreover, summary affirmance does not endorse the reasoning of the court below and since the Georgia redistricting at issue in *Busbee* could be viewed as retrogressive, affirming the judgment in that case is not necessarily premised on the view that Section 5 reaches nonretrogressive changes. *See, e.g., Bush*, 517 U.S. at 996 (Kennedy, J., concurring) ("[O]ur summary affirmance in *DeWitt*, stands for no proposition other than that the districts reviewed there were constitutional."). *See* Initial Br. at 30 n.23.

the *unconstitutional* 'purpose' of unconstitutionally diluting minority voting strength" (emphasis in original)); *id.* at 71a-72a (Stevens, J., dissenting in part and concurring in part) ("*Beer*'s dictum suggests that any changes that violate the standard established in *White v. Regester* should not be precleared."). Thus, if Section 5 does reach a change with a nonretrogressive discriminatory purpose, the United States has the burden of establishing that impermissible purpose in a Section 5 proceeding.[10]

Indeed, in *Bossier I*, the United States expressly conceded this point because it was forced to acknowledge that, even under its erroneous construction, *Beer* squarely placed the burden of proving unconstitutional discriminatory purpose on it. Specifically, as the United States' *Bossier I* brief conceded, *Beer* upheld the reapportionment plan at issue because " '*[t]he United States has made no claim*' " that the plan violated the Constitution. U.S. Br. in *Bossier I*, at 43 (quoting 425 U.S. at 142 n.14) (emphasis added by U.S. Brief). Accordingly, the United States conceded that, under *Beer*, the burden to prove a constitutional violation "as a bar to preclearance remains with the *Attorney General*." U.S. Br. in *Bossier I* at 43 (emphasis added).[11] Thus, if appellants are correct that *Beer* authorized

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[10] To be sure, the covered jurisdiction has the burden to disprove both the retrogressive purpose and effect prohibited by the plain language of Section 5. But no one argues that the statutory language can be consistently construed to prohibit only a retrogressive effect but simultaneously prohibit a nonretrogressive purpose. Rather, the assertion is that "purpose" must be treated differently than "effect" in order to ensure that Section 5 reaches all unconstitutional voting discrimination. U.S. Br. at 29-31. Since the premise for so construing Section 5 is to maintain consistency with constitutional norms, the burdens of proof should similarly be consistent with the constitutional norm.

[11] In its reply brief, the Solicitor General disingenuously maintains that the United States never conceded in *Bossier I* that it had the burden of proving a constitutional violation, but conceded only that it had the burden of proving a *Section 2* violation. U.S. Reply Br. at 12 n.12. But, in the *Bossier I* brief, the United States accepted the Section 2 burden precisely and only because, under *Beer*, it plainly had the burden to show a

denying preclearance to any discriminatory voting change that violates the Constitution, that opinion also concededly placed the burden on the "Attorney General" to prove such an unconstitutional purpose.

Similarly, the dissenting opinion in *Bossier I*, after concluding that Section 5 preclearance should be denied to changes which offend Section 2, acknowledged that the burden of establishing that Section 2 violation "should rest on the Attorney General" as it would in "any § 2 challenge." *Bossier I*, App. 69a (Stevens, J., dissenting in part and concurring in part). By the same logic, assuming that Section 5 prohibits unconstitutional vote dilution, the burden of establishing that constitutional violation should rest with the Attorney General as it would in any constitutional challenge.

In short, it seems to be universally agreed that if Section 5 is to be extended to encompass voting rights guarantees embodied in "other federal law[s]," there should be a concomitant adjustment to require that the United States prove such a violation, as it would have to in actions brought directly under those "other federal law[s]." *Id.* at 69a-70a.[12] More specifically, those who believe that *Beer* authorized denial of preclearance to constitutional violations (or laws "coextensive with the constitutional standard" as it was understood in 1976) have acknowledged that the burden of proving that *White v. Regester* violation was on the United States. *Id.* at 71a.

Moreover, placing the burden on the United States to show an unconstitutional purpose is consistent with the general rule that "[t]he burden of proving compliance with the Act rests on

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constitutional violation. U.S. Br. in *Bossier I*, at 43. Consequently, the United States' argument ran, since it had the constitutional burden and since the 1982 Congress equated constitutional and Section 2 violations, it *also* had the burden under Section 2. Accordingly, the necessary premise of the United States' concession that it had the Section 2 burden was its concession that it had the burden to prove unconstitutional discrimination.

[12] *See, e.g., Fireman's Fund Ins. Co. v. Videfreeze Corp.*, 540 F.2d 1171, 1176 (3d Cir. 1976) ("The burden of proof which usually accompanies the affirmative of the issue . . . should not be shifted merely due to the form of the action.").

the jurisdiction." *Id.* at 68a. The fact that the jurisdiction must disprove retrogressive purpose and effect, by itself, "shift[s] the advantage of time and inertia from the perpetrators of the [alleged] evil to its [alleged] victims" by overriding the normal presumption of legality extended to sovereign state acts and by forcing federal review *prior* to any use of the suspect change. *South Carolina*, 383 U.S. at 328. This advantage is not undone by requiring the United States to prove an unconstitutional purpose in the same manner it would have to in a normal proceeding. If, for whatever reason, a Section 5 proceeding is expanded to include adjudication of an unconstitutional purpose issue that is normally adjudicated in district court, there is no reason that either party should have a different burden than it would have in that typical case. In adjudicating unconstitutional vote discrimination, southern jurisdictions are not second-class citizens who must affirmatively disprove their guilt, but, like northern jurisdictions, are entitled to a strong presumption of constitutionality unless the Justice Department or private plaintiffs can prove otherwise.

That being so, even assuming there is a plausible basis for importing constitutional standards into Section 5, there is nevertheless no basis for also requiring covered jurisdictions to prove their compliance with that exogenous law and to do so would markedly enhance the "novel" and "extraordinary" federalism burden already imposed by Section 5. *Bossier I*, App. 66a (Stevens, J., dissenting in part and concurring in part). Congress tempered the extraordinary procedural burden imposed by Section 5 by limiting the substantive issue to the straightforward and manageable one of whether the change is a regression from the *status quo*. Further requiring a covered jurisdiction to also, in essence, sue itself under the Constitution and disprove the validity of hypothetical alternatives invented by Justice Department lawyers (and then perhaps litigate those same issues *again* in a defensive lawsuit in district court) would disrupt that delicate balance and be contrary to basic federalism principles.

Indeed, particularly since the Justice Department equates "discriminatory purpose" with a failure to maximize the number of majority-minority districts, imposing such a burden

on a covered jurisdiction raises serious constitutional questions about Section 5 itself. *Miller*, 515 U.S. at 925-28. Given this constitutional doubt about the expansive Section 5 envisioned by appellants, their interpretation should not be adopted if the statute can reasonably be construed otherwise – which it obviously can and should be. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 574-75 (1988).

Finally, we note that since the only equitable and logical way to import the unconstitutional purpose inquiry into a Section 5 proceeding is to shift the burden of proof to the United States, this is an additional reason for not so expanding the substantive scope of the Section 5 proceeding. This is because, as the United States has also acknowledged, any interpretation of the preclearance proceedings which entails a burden shift cannot practicably be conducted in the Justice Department's Section 5 administrative proceedings. More fundamentally, it is absurd to believe that one lawyer in the Justice Department's Civil Rights Division can carry the burden of disproving the discriminatory purpose alleged by another lawyer, or that the Attorney General could disprove discriminatory purpose to herself. Therefore, all such constitutional issues should be left to the district courts.

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Nos. 98-405 and 98-406

In the Supreme Court of the United States

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF ON REARGUMENT FOR THE FEDERAL APPELLANT

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QUESTIONS PRESENTED ON REARGUMENT

1. Does the purpose prong of Section 5 of the Voting Rights Act of 1965 extend to a discriminatory but non-retrogressive purpose?

2. Assuming arguendo that Section 5 prohibits the implementation of a districting plan enacted with a discriminatory, non-retrogressive purpose, does the government or the covered jurisdiction bear the burden of proof on this issue?

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ARGUMENT

I. SECTION 5 OF THE VOTING RIGHTS ACT OF 1965 BARS IMPLEMENTATION OF A NEW VOTING PRACTICE ENACTED WITH A RACIALLY DISCRIMINATORY PURPOSE, EVEN IF THE NEW PRACTICE IS NOT RETROGRESSIVE IN PURPOSE OR EFFECT

In our original opening and reply briefs, we explain that Section 5 of the Voting Rights Act of 1965 (Act), 42 U.S.C. 1973c, prohibits the implementation by a covered jurisdiction

of any new voting practice enacted with the purpose of discriminating on the basis of race or color. That prohibition is not limited to changes enacted with an intent to worsen the voting strength of a minority group. This conclusion follows from the language of Section 5 (Opening Br. 18),[1] the legislative history of its enactment in 1965 and its reenactments in 1970, 1975, and 1982 (*id.* at 20-24), and this Court's decisions (*id.* at 24-29), especially *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987); *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1166 (1983); and *City of Richmond* v. *United States*, 422 U.S. 358 (1975). To those points we add the following:

A. The text of Section 5 establishes that a new voting practice that has a discriminatory, albeit nonretrogressive, purpose, may not be implemented. Section 5 provides that a covered jurisdiction may implement a new voting practice if it obtains a declaratory judgment from the United States District Court for the District of Columbia that the practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. A "purpose * * * of denying or abridging the right to vote on account of race or color" plainly includes a purpose to perpetuate an existing situation because it denies or abridges black citizens' right to vote, and to resist further black enfranchisement. For example, a new voting practice intended to prevent the registration of black citizens who had previously been prohibited from voting, or to keep new black registration to the minimum possible, would have the purpose to deny or abridge black citizens' right to vote on account of their race or color, even if that voting change was not designed to reduce black voter

[1] "Opening Br." refers to our principal brief on the merits filed in March 1999; "Appellee Br." refers to appellee's brief on the merits filed in April 1999.

participation further. Such a voting practice could not be precleared, for it would not be a practice that "does not have the purpose * * * of denying or abridging the right to vote on account of race."

None of that language suggests a limitation barring preclearance only of new practices with a retrogressive purpose. Appellee suggests (Appellee Br. 18) that the limitation to retrogression is found in the statutory phrase "denying or abridging." A reading of "denying or abridging" as limited to retrogression is untenable, however, in light of the structure of the Voting Rights Act as a whole, including other provisions where the same phrase is employed but where no limitation to retrogression may be found.

For example, Section 3(c) of the Act, 42 U.S.C. 1973a(c), establishes a preclearance procedure similar to that in Section 5 for jurisdictions where a court has found a violation of the right to vote guaranteed by the Fourteenth and Fifteenth Amendments justifying equitable relief. Under Section 3(c), the court may order such a jurisdiction not to implement any voting change unless the court or the Attorney General concludes that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973a(c). Yet Section 3(c)'s bar on implementation of new voting practices that have a purpose "of denying or abridging the right to vote on account of race or color" clearly is not limited to changes with a retrogressive purpose; if it were so limited, then a jurisdiction that was adjudicated to have engaged in intentional discrimination could simply implement a new voting practice with the intent to perpetuate the same discrimination.[2] Similarly, Section 2 of the Act, as

[2] See H.R. Rep. No. 439, 89th Cong., 1st Sess. 23 (1965) (Section 3(c) intended "to insure against the erection of new and onerous discriminatory voting barriers by State or political subdivisions which have been

originally enacted, see 42 U.S.C. 1973 (1970), prohibited the application of any voting qualification "to deny or abridge the right of any citizen of the United States to vote on account of race or color." Yet neither Congress nor this Court has ever suggested that Section 2's prohibition against voting practices that "deny or abridge the right * * * to vote on account of race or color" was limited to retrogressive voting practices.[3]

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found to have discriminated"); S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 20 (1965) (similar); 111 Cong. Rec. 10,726 (1965) (remarks of Sen. Tydings) (Section 3(c) aimed at state practices "designed to limit exercise of the franchise in an effort to freeze the present Negro-white registration disparity created by past violations of the 15th amendment"). The Department of Justice applies both the purpose and effect prongs of Section 3(c) in a manner consistent with our position on Section 5, *viz.*, as prohibiting enforcement of new voting practices that have a discriminatory purpose (whether or not retrogressive) or will have a retrogressive effect. See 28 C.F.R. 51.8.

[3] Since its amendment in 1982, Section 2 has prohibited the enforcement of any voting practice "which results in a denial or abridgement of the right * * * to vote on account of race or color." 42 U.S.C. 1973(a) (1994). This Court has never suggested that the phrase "denial or abridgement" in amended Section 2 refers to retrogression.

Although Section 2 and Section 5 have some language in common, the two provisions do operate quite differently in several respects. First, Section 5 applies only to new voting practices enacted or administered in certain States and political subdivisions that fall within the coverage formulas of Section 4 of the Voting Rights Act, see 42 U.S.C. 1973b; 28 C.F.R. Pt. 51 App.; *Lopez* v. *Monterey County*, 119 S. Ct. 693, 697 (1999), whereas Section 2 applies to all voting practices, old and new, and to the entire country. Second, Section 5 prevents a covered jurisdiction from implementing a new voting practice unless it has been precleared by the Attorney General or the United States District Court for the District of Columbia, whereas Section 2 places no obligation on the part of a State or any political unit to obtain preclearance of its voting practices. Third, a plaintiff challenging a voting practice under Section 2 has the burden of proving its invalidity, see *Thornburg* v. *Gingles*, 478 U.S. 30, 46, 51 (1986), whereas Section 5 places the burden on the covered jurisdiction to show

Appellee's argument is based fundamentally on a serious misapprehension of what this Court decided in *Beer* v. *United States*, 425 U.S. 130 (1976). In *Beer*, this Court did not decide that the phrase "denying or abridging the right to vote," as used in Section 5, refers only to retrogression. *Beer* held, rather, that the term "effect," as used in Section 5, is limited to precluding enforcement of new voting practices that further impair the voting strength of minorities. See *id.* at 141 ("It is thus apparent that a legislative reapportionment that enhances the position of racial minorities with respect to their effective exercise of the electoral franchise can hardly have the *'effect'* of diluting or abridging the right to vote on account of race within the meaning of § 5.") (emphasis added).

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that preclearance is warranted, see pp. 14-25, *infra*. Fourth, a showing of retrogression (as that concept has been developed under the effect prong of Section 5) is neither necessary nor sufficient to establish a violation of Section 2. As noted above, a violation of Section 2 may be established by showing that the challenged practice "results in" the denial or abridgment of the right to vote on account of race or color, and that "results" standard is met if the plaintiff shows that the "political processes leading to nomination or election * * * are not equally open to participation" by minorities. See 42 U.S.C. 1973(a) and (b). The "results" standard of Section 2 is not the same as retrogression; a voting change may violate Section 2 but not cause retrogression, and *vice versa*. Finally, since its amendment in 1982, Section 2 has not required that the plaintiff show that the jurisdiction acted with discriminatory intent. See *Thornburg* v. *Gingles*, 478 U.S. at 44. Thus, under Section 2, a plaintiff challenging a voting practice may prevail if he shows that the challenged practice violates the "results" standard (whether or not the practice is intentionally discriminatory, and whether or not it is retrogressive), whereas under Section 5, a covered jurisdiction obtains preclearance if it shows that the new voting practice is not intentionally discriminatory, and will not have a retrogressive effect. None of the differences between Section 2 and Section 5, however, turns on possible differences in the meaning of "deny or abridge the right to vote" as used in the two Sections.

As we have explained (Opening Br. 29-31), the Court's interpretation of "effect" in Section 5 in *Beer* reflected concerns about how far Congress intended Section 5's effect prong to reach beyond the Constitution itself. The Court observed that, under the district court's application of Section 5 in *Beer* (which this Court rejected), Section 5's effect prong would, as a practical matter, have been transformed into a statute prohibiting all new voting practices with a disparate impact on minorities. See 425 U.S. at 136-137 & n.8; cf. *id.* at 143-144 (White, J., dissenting) (arguing that Section 5 required "new electoral districts [to] afford the Negro minority the opportunity to achieve legislative representation roughly proportional to the Negro population in the community"). Almost simultaneously with *Beer*, however, the Court concluded that proof of a violation of the Equal Protection Clause of the Fourteenth Amendment requires a showing of discriminatory intent, and that the Clause does not prohibit state action with only a disparate impact on racial minorities. See *Washington* v. *Davis*, 426 U.S. 229 (1976). The purpose prong of Section 5 raises no such questions about Congress's intent to reach beyond the Constitution, however, because the purpose prong reaches only new voting practices enacted with invidious intent, and therefore precludes enforcement only of new voting practices that violate the Constitution itself. Cf. *Chisom* v. *Roemer*, 501 U.S. 380, 416-417 (1991) (Scalia, J., dissenting) (observing that "intentional discrimination in the election of judges, whatever its form, is constitutionally prohibited, and the preclearance provision of § 5 gives the Government a method by which to prevent that").

Beer did refer to Congress's "desire[] to prevent States from 'undo[ing] or defeat[ing] the rights recently won'" by black citizens as a basis for its holding. See 425 U.S. at 140 (initial brackets added). The *Beer* opinion did so, however, in the context of explaining why Congress had required

covered jurisdictions to demonstrate to the Attorney General or the district court "that the [voting] change does not have a discriminatory *effect*," *ibid.* (emphasis added)—not why Congress had prohibited enforcement of new voting practices with a discriminatory purpose, which, the Court noted, was not at issue in that case, see *id.* at 136 n.7.[4] Further, the *Beer* opinion expressed no doubt that even an ameliorative change might be denied preclearance if it "so discriminates on the basis of race or color as to violate the Constitution," *id.* at 141; see *id.* at 142 n.14 ("It is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless *continue so to discriminate* on the basis of race or color as to be unconstitutional.") (emphasis added).[5]

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[4] Moreover, as the Court explained in *City of Rome* v. *United States*, 446 U.S. 156, 177 (1980), Section 5's prohibition against implementation of voting changes with a retrogressive effect reaches those situations where, even though invidious intent might not be readily discerned, there is nonetheless a demonstrable "risk of purposeful discrimination" by a covered jurisdiction.

[5] It is of course true that Section 5 requires preclearance only of *new* voting practices, but that point does not suggest that Congress intended to bar preclearance only of those new practices that are designed to worsen the electoral position of minorities. Rather, Congress required preclearance of new voting practices because it was concerned that covered jurisdictions might employ new discriminatory practices to frustrate the operation of the Voting Rights Act in the way that they had previously frustrated judicial decrees declaring discriminatory tests and devices to be invalid. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966); *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 567-568 (1969). In addition, if the Act had required preclearance of all state voting practices, even those already in force at the time the Act was passed, it would have caused a much more serious intrusion on state interests, for it would have required each covered jurisdiction to submit its entire election code to the Attorney General or the district court for review and might have suspended elections in those jurisdictions until such a review could have

Appellee objects (Appellee Br. 17) that, under our submission, the purpose and effect prongs of Section 5 are not coterminous; a covered jurisdiction's purpose to accomplish a particular "den[ial] or abridg[ment] [of] the right to vote on account of race or color" would require denial of preclearance, even though a voting change that merely had that incidental effect could be precleared, if it were adopted with a racially neutral purpose and were not retrogressive. It is a familiar principle, however, that "acts generally lawful may become unlawful when done to accomplish an unlawful end." *City of Richmond* v. *United States*, 422 U.S. 358, 379 (1975) (brackets omitted). That principle has played an important role in this Court's jurisprudence construing the Civil War Amendments.[6] It is not surprising, therefore, that a redistricting plan adopted for the purpose of preventing improvement in blacks' voting strength would violate the Constitution and would be denied preclearance under Section 5's purpose prong—even though the same redistricting plan would not be unconstitutional and would therefore not be denied preclearance if it were adopted for valid, racially neutral reasons, and if it had the incidental, nonretrogressive effect of limiting improvement in racial minorities' voting strength. See *id.* at 378 (emphasizing that it may be "forbidden by § 5 to have the purpose and intent of achieving only

been completed. For the same reason, such a requirement would probably have been impracticable.

[6] See *Hunter* v. *Underwood*, 471 U.S. 222, 232-233 (1985) (even if disfranchisement of persons convicted of crimes involving moral turpitude would be valid if enacted for a racially neutral reason, racial motivation rendered it invalid); *Rogers* v. *Lodge*, 458 U.S. 613, 617 (1982) (reiterating that, although multimember districts are not unconstitutional per se, they are invalid if "conceived or operated as purposeful devices to further racial discrimination"); *Gomillion* v. *Lightfoot*, 364 U.S. 339, 347 (1960) (racial motivations invalidated city boundary changes, even if those changes might be permissible if adopted for neutral reasons).

what is a perfectly legal result under that section," because an official action "taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution or under the statute").

B. The legislative history of the original enactment of Section 5 and its three reenactments confirms that Congress intended to bar implementation of all new voting practices that violate the Constitution because of their purpose to deny or abridge minority citizens' right to vote, and not just those changes intended to erode further the electoral position of minority voters.

We have explained (Opening Br. 20-22) that Congress enacted Section 5 in large part to overcome official resistance to the registration of black voters, in particular ingenious state efforts that had successfully evaded the effect of federal court decrees striking down state voting practices preventing the registration of blacks.[7] Congress was concerned that covered jurisdictions would adopt new devices to freeze the *existing* disparity in voter registration between blacks and whites. See H.R. Rep. No. 439, 89th Cong., 1st Sess. 15-16 (1965); S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 15-16 (1965) (joint views of 12 members of Senate Judiciary Committee); see also 111 Cong. Rec. 9794 (1965) (remarks of Sen. Hart) ("Section 5 would enable the Attorney General and the courts to insure against changing the laws since November [1964], which would have the effect of *perpetuating* discrimination.") (emphasis added).

Attorney General Katzenbach's summary of litigation under the Civil Rights Act of 1957, which was influential in securing passage of the Voting Rights Act, see *South Carolina* v. *Katzenbach*, 383 U.S. 301, 313-315 (1966), em-

[7] This Court has stressed that Section 5 "must, of course, be interpreted in light of its prophylactic purpose and the historical experience which it reflects." *McCain* v. *Lybrand*, 465 U.S. 236, 246 (1984).

phasized that the new legislation was needed because, despite the Justice Department's "most vigorous efforts in the courts" to secure black citizens' right to vote as guaranteed by the Fifteenth Amendment by challenging discriminatory practices inhibiting black voter registration, "there has been case after case of slow or ineffective relief." *Voting Rights: Hearings on H.R. 6400 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 89th Cong., 1st Sess. 9 (1965) (*House Hearings*). In summarizing the unsatisfactory outcome of the case-by-case approach and the need for Section 5's preclearance remedy, the House Judiciary Committee stressed: "The judicial process affords those who are determined to resist plentiful opportunity to resist. Indeed, even after apparent defeat resisters seek new ways and means of discriminating. Barring one contrivance too often has caused no change in result, only in methods." H.R. Rep. No. 439, at 10; accord S. Rep. No. 162, Pt. 3, at 5.

Especially in light of the evidence before Congress in 1965 that tests and devices in covered jurisdictions had been highly effective in blocking most black voter participation, it is simply implausible that Congress limited Section 5's purpose prong to bar only new voting practices intended to make matters even worse. Congress was informed, for example, that, in Wilcox County, Alabama, there were *zero* blacks registered to vote (out of a black voting age population of 6085, which was much larger than the white voting age population of 2647), and that similar, exceedingly small numbers of black citizens were registered to vote in numerous counties where discriminatory tests and devices were administered. See S. Rep. No. 162, Pt. 3, at 44-45; *House Hearings* 8, 32-37. Under the logic of appellee's argument, Section 5 had little if any role to play in those counties, because it would have been difficult if not impossible to

cause further diminishment in the voting strength of black citizens there.[8]

The relevant committees, moreover, plainly perceived the function of Section 5 as enforcing the commands of the Constitution's prohibitions against official racial discrimination in voting. The House Judiciary Committee summarized Section 5's operation by stating that a covered jurisdiction "will not be able to enforce [a new voting practice] without obtaining a declaratory judgment that [it] does not have the purpose and will not have the effect of denying or abridging rights guaranteed by the 15th amendment." H.R. Rep. No. 439, at 26. Similarly, the supportive members of the Senate Judiciary Committee stated that "so long as State laws or practices erecting voting qualifications do not run afoul [of] the 15th amendment or other provisions of the Constitution, they stand undisturbed." S. Rep. No. 162, Pt. 3, at 18. No suggestion was made of any limitation to new voting practices intended to cause further encroachments on such constitutional rights.

The legislative records of the reenactments of Section 5 also contradict appellee's submission that Congress intended Section 5 *only* to address retrogression of minority voting strength. When Section 5 was reenacted in 1970 and 1975, the relevant congressional committees emphasized that the preclearance remedy remained necessary because, although black citizens were no longer subject to absolute denials of their right to vote through registration tests, covered jurisdictions had attempted to preempt increased black voting

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[8] When the Voting Rights Act was adopted, only 6.4% of blacks of voting age in the State of Mississippi were registered to vote, whereas 66% of whites of voting age in that State were registered to vote. *House Hearings* 32. Appellee's argument implies that Section 5 was intended to deny preclearance of new registration practices in Mississippi only insofar as those new practices intended or would effectuate a further diminishment in black voting strength.

strength by adopting at-large elections, increasing filing fees, abolishing elective offices, and extending the terms of white incumbents. See H.R. Rep. No. 397, 91st Cong., 1st Sess. 7 (1969); S. Rep. No. 295, 94th Cong., 1st Sess. 17 (1975). In 1975, both the Senate and House Judiciary Committees stated with approval that it was "largely Section 5" that had been responsible for gains in minority voting strength, see *id.* at 19; H.R. Rep. No. 196, 94th Cong., 1st Sess. 11 (1975)—an observation inconsistent with appellee's submission that Section 5 was intended merely to prevent retrogression from gains that minorities might have somehow achieved through other means. See also *City of Rome* v. *United States*, 446 U.S. 156, 182 (1980) (observing that Congress reenacted Section 5 in 1975 to preserve gains achieved "*and* to promote further amelioration of voting discrimination" and "to counter the perpetuation" of pervasive voting discrimination) (emphasis added).

When Congress comprehensively reviewed the enforcement history of Section 5 in 1982 and reenacted it again, the definitive Senate Report did not describe preventing retrogression as the sole function of Section 5. That Report stressed, in fact, that Section 5 had been "designed to insure that old devices for disenfranchisement would not simply be replaced by new ones," S. Rep. No. 417, 97th Cong., 2d Sess. 6 (1982), and that "[c]ontinued progress toward equal opportunity in the electoral process will be halted if we abandon the Act's crucial safeguards [in Section 5] now," *id.* at 10. See also 128 Cong. Rec. 13,288 (1982) (remarks of Sen. Hatch) (favoring continued preclearance because, among other things, "[f]ew would argue that all traces of the discriminatory history that existed in some of the covered jurisdictions have been eradicated"); *id.* at 13,293 (remarks of Sen. Grassley) (observing that "[t]he gains in minority electoral participation achieved through the protections of [Section 5] reflect the success with which it has been

implemented" and "[t]he strength of the act as originally adopted lay in its power to proscribe discriminatory practices as they evolved").

C. These materials demonstrate that the purpose prong of Section 5 has been fundamental to dismantling the massive edifice of official racial discrimination in voting that existed in 1965, has been equally important in preventing the use of new discriminatory devices to perpetuate that discrimination in other guises, and was never intended to be limited to new voting practices that would make matters even worse (especially not worse than they were in 1965). And as we have previously explained (Opening Br. 32-33), in 34 years of administering Section 5, the Justice Department has *never* limited its "purpose" analysis in the administrative preclearance process to an examination of a covered jurisdiction's "retrogressive purpose."[9] Appellee's submission, however, would reduce the purpose prong of Section 5 to a trivial matter, limited to preventing enforcement of those voting changes that are intended to cause retrogression but are destined to fail in doing so (since any new voting practice that actually "will * * * have the effect" of retrogression will be denied preclearance under the effect prong). The Court should reject a construction of Section 5 that would render its purpose prong so insignificant. Cf. *Muscarello* v. *United States*, 524 U.S. 125, 136-137 (1998) (rejecting narrow construction of "carries" in statute punishing one

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[9] Although the Justice Department objects to fewer than 1% of the voting changes submitted for preclearance (see pp. 22-23, *infra*), most of the objections the Department has made on the basis of purpose have been to nonretrogressive voting changes. From January 1, 1990, to July 23, 1999, the Department received 42,596 preclearance submissions, and interposed objections to changes in 367 of those submissions. More than 60% of those submissions were interposed because, even though the changes were nonretrogressive, there was reason to believe that the changes were enacted with a discriminatory purpose.

who "uses or carries" a firearm because, having adopted a narrow construction of "uses," Court could not "also construe 'carr[ies]' narrowly without undercutting the statute's basic objective" and "leaving a gap in coverage that we do not believe Congress intended").

II. A COVERED JURISDICTION BEARS THE BURDEN OF PROVING THAT ITS NEW VOTING PRACTICE DOES NOT HAVE A DISCRIMINATORY PURPOSE

A. The text and legislative history of Section 5, as well as this Court's decisions, establish that jurisdictions covered by Section 5 bear the burden of proving the absence of a discriminatory purpose in their new voting practices.

1. Section 5 provides that, whenever a covered jurisdiction shall enact or seek to administer a new voting practice, the jurisdiction "may institute an action * * * for a declaratory judgment that" the new voting practice does not have a prohibited purpose or effect. 42 U.S.C. 1973c. "[U]nless and until the court enters such judgment" in favor of the covered jurisdiction, the new voting practice may not be enforced. *Ibid.* The statute alternatively permits the jurisdiction to submit the new voting practice to the Attorney General for preclearance, and provides that a new practice "may be enforced * * * if the [new practice] has been submitted * * * to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission." *Ibid.*

Under the litigation framework established by Section 5, the covered jurisdiction must initiate the preclearance action in district court, and may not enforce its new voting changes until that action is resolved. The covered jurisdiction is placed in the position of a plaintiff in a civil action who requests that the court remove a legal impediment applicable to it. Traditionally in civil litigation, the plaintiff bears

the burden of proof in at least its primary sense, *viz.*, the risk of nonpersuasion. See 21 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5122, at 553-557 (1977). Congress is presumed to be aware of such well-established legal principles when it enacts legislation, see *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 185 (1988); *Cannon* v. *University of Chicago*, 441 U.S. 677, 699 (1979), and not to deviate from them absent express indication in the statute, see *Morissette* v. *United States*, 342 U.S. 246, 261-262 (1952). The text of Section 5 therefore places the risk of nonpersuasion in a preclearance action on the covered jurisdiction. See *McCain* v. *Lybrand*, 465 U.S. 236, 257 (1984).

2. The legislative history of Section 5 makes abundantly clear that the covered jurisdiction bears the burden of proof. The placement of the burden of proof on covered jurisdictions was a significant focus of opposition to the Voting Rights Act. During legislative hearings on the Act, Attorney General Katzenbach was questioned several times about the burden of proof and each time confirmed that it would lie with the covered jurisdiction. *House Hearings* 87, 90, 93, 95. Opponents of the bill criticized the preclearance provision because of its "presumption of the irregularity of State voting laws, and the rules, regulations, and resolutions of its subdivisions" and its requirement that a covered jurisdiction "absolve itself of an automatically presumed guilt." H.R. Rep. No. 439, at 43 (views of Republican Judiciary Committee members); see also S. Rep. No. 162, Pt. 2, at 29 (statement of Thomas H. Watkins, submitted by Sens. Eastland, McClellan, and Ervin, criticizing preclearance proposal because covered jurisdictions must "secure[] an adjudication, *with the accompanying burden of proof*," that new voting practices would not discriminate) (emphasis in original).

During Congress's consideration of the first extension of Section 5, several proposals were made to shift the burden of proof to the Attorney General. The House Judiciary Committee rejected such proposals and observed:

> The decision [in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969)] underscores the advantage section 5 produces in placing the burden of proof on a covered jurisdiction to show that a new voting law or procedure does not have the purpose and will not have the effect of discriminating on the basis of race or color. * * * Failure to continue this provision of the act would jettison a vital element of the enforcement machinery. It would reverse the burden of proof and restore time-consuming litigation as the principal means of assuring the equal right to vote.

H.R. Rep. No. 397, at 8. Members of the Senate, whether supporting or opposing the extension of Section 5, similarly understood it as placing the burden of proof on the covered jurisdiction.[10]

When Congress reenacted Section 5 in 1975, it additionally made clear that it intended the covered jurisdiction to shoulder the burden of proof in both preclearance actions in the district court and in the Attorney General's administra-

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[10] See 116 Cong. Rec. 5518, 5523 (1970) (statement of ten members of Senate Judiciary Committee favoring extension) (noting that "[t]he burden of proving the nondiscriminatory purpose and effect is on the governmental body seeking exemption" and opposing bill reported by Senate Judiciary Committee because it "would shift the all important burden of proof which now rests on the jurisdiction seeking to implement the new practice or procedure"); *id.* at 5677-5678 (remarks by Sens. Ervin, Allen, and Tower); *id.* at 6154 (remarks by Sen. Fong) (among "crucial features of strength contained in section 5" are that "the burden of proof is placed upon the jurisdiction"; "[t]hose who know the law or procedure best and what motivated its passage must come forward and explain it").

tive review of voting changes. The House Judiciary Committee explained that Section 5 "presumes that the change has the purpose or would have the effect of discriminating on the basis of race or color. * * * If no evidence is submitted to overcome the presumption the District Court or the Attorney General must disapprove the change." H.R. Rep. No. 196, at 59.

The Senate Report accompanying the 1982 extension of Section 5 shows that Congress again determined that the covered jurisdiction's burden of proof is central to enforcement of the Fourteenth and Fifteenth Amendments. In describing the proper operation of Section 5's preclearance provisions, the Senate Report stated that "[t]he Attorney General or the [United States District Court for the District of Columbia] was required to withhold approval until the submitting jurisdiction shows that the change will not be discriminatory in purpose or effect. This provision was designed to insure that old devices for disenfranchisement would not simply be replaced by new ones." S. Rep. No. 417, at 6. The Subcommittee on the Constitution described the operation of Section 5 in the same way: "A jurisdiction seeking to preclear a voting change under section 5 has the burden of showing * * * that the voting change under review 'does not have the purpose and will not have the effect of denying or abridging[']' the voting rights of a covered minority group." Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess., *Voting Rights Act: Report on S. 1992*, at 52-53 (Comm. Print 1982). Legislators who opposed the extension of the Act in 1982 criticized Section 5 specifically because it placed the burden of proving the "absence of discrimination" on covered jurisdictions. See S. Rep. No. 417, at 220 (minority views of Sen. East); 128 Cong. Rec. 13,292 (1982) (remarks of Sen. Helms).

3. This Court has consistently held that Section 5 places the burden on the covered jurisdiction to prove the absence of a discriminatory purpose. *City of Pleasant Grove*, 479 U.S. at 469; see J.S. App. 34a-35a, 38a (*Bossier I*); *McCain* v. *Lybrand*, 465 U.S. at 257; *City of Rome*, 446 U.S. at 187; *Georgia* v. *United States*, 411 U.S. 526, 538 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. at 335; see also *City of Petersburg* v. *United States*, 354 F. Supp. 1021, 1027 (D.D.C. 1972), aff'd mem., 410 U.S. 962 (1973).

In those decisions, the Court has identified several reasons why Congress decided to impose the burden on the covered jurisdictions. In *South Carolina* v. *Katzenbach*, the Court explained that, because Congress had found case-by-case litigation to be inadequate to combat persistent discrimination in voting, Congress had decided to "shift the advantage of time and inertia from the perpetrators of the evil to its victims." 383 U.S. at 328. Moreover, the Court stressed, given that covered jurisdictions had previously "resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees[,] * * * there was nothing inappropriate * * * in putting the burden of proof on" covered jurisdictions seeking preclearance. *Id.* at 335.

In *Georgia* v. *United States*, the Court rejected the contention that the burden of proof in the administrative preclearance process must rest with the Attorney General. In that case, Georgia challenged the Attorney General's regulations governing administrative preclearance, which placed the burden of proof on the jurisdiction submitting changes to the Attorney General to show that its new voting practice would not have a prohibited purpose or effect. The Court observed that "[i]t is well established that in a declaratory judgment action under § 5, the plaintiff State has the burden of proof," 411 U.S. at 538, and described the

question before it as whether the Attorney General was obligated to adopt a more lenient approach towards covered jurisdictions in the administrative preclearance process, or, put another way, whether the Attorney General "is without power to object unless he has actually found that the changes contained in a submission have a discriminatory purpose or effect," *id.* at 537. Explaining that "[t]he alternative procedure of submission to the Attorney General merely gives the covered State a rapid method of rendering a new state election law enforceable," *id.* at 538 (internal quotation marks omitted), the Court upheld the Attorney General's regulations because "[a]ny less stringent standard might well have rendered the formal declaratory judgment procedure a dead letter by making available to covered States a far smoother path to clearance." *Ibid.*[11]

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[11] Before this Court's decision on the prior appeal in this case, the Attorney General's regulations provided that the Department of Justice would deny preclearance of a voting change if "a bar to implementation of the change [was] necessary to prevent a clear violation of amended section 2." See 28 C.F.R. 51.55(b)(2) (1996). Of course, this Court's decision on the prior appeal in this case rejected the government's position on that point and made clear that the only effect warranting denial of preclearance is a retrogressive effect. J.S. App. 38a. The regulation quoted above has been repealed. 63 Fed. Reg. 24,108 (1998).

Appellee has pointed out (Appellee Br. 39-40) that, during the period in which that regulation was in effect, the government assumed the burden of proving that a new voting practice should be denied preclearance on the ground that it would "clearly violate" the "results" standard of Section 2. The government's assumption of the burden of proof on that issue reflected its attempt to reconcile, on the one hand, this Court's decisions in *Beer* and *City of Lockhart* v. *United States*, 460 U.S. 125 (1983), which ruled that a nonretrogressive voting change should not be denied preclearance under the effect prong of Section 5, and on the other hand, the legislative history of the 1982 reenactment of Section 5, which indicated that a demonstration of vote dilution sufficient to establish a violation of amended Section 2's "results" standard should lead to denial of preclearance. See J.S. App. 42a; S. Rep. No. 417, at 12 n.31. The govern-

These decisions are consistent with a common-sense approach towards the burden of proof in preclearance cases. Congress was concerned that covered jurisdictions would employ new voting practices to evade the effect of the suspension of discriminatory tests and devices in Section 4 of the Act, 42 U.S.C. 1973b. Congress therefore required covered jurisdictions to show that their new voting practices were not merely attempts to perpetuate racial discrimination by other means. Further, the covered jurisdiction is in possession of most of the information relevant to establishing the validity *vel non* of a new voting practice, including, most pertinently, evidence that would bear on the question of its own purpose. Finally, given that Congress found that the covered jurisdictions had engaged in intentional racial discrimination in voting in the past, it was sensible for Congress to establish, in effect, a presumption that future voting practices enacted by covered jurisdictions would also have a discriminatory purpose, and to require those jurisdictions to demonstrate that such a presumption was rebutted in a particular case.

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ment concluded that it would not be inconsistent with the decisions in *Beer* and *City of Lockhart* to deny preclearance of a nonretrogressive voting change if the government made a showing that the change would "clearly violate" the "results" standard of amended Section 2.

This Court's decision on the prior appeal makes clear that the government's attempt to reconcile amended Section 2's "results" standard with Section 5's "effect" prong was in error, and could not be salvaged by the government's assumption of the burden of proof on the Section 2 issue. Therefore, there is no longer any basis for an argument that the burden of proof in a Section 5 effect case should rest with the government. In addition, where the issue is discriminatory purpose rather than effect, the government has consistently maintained that the burden of proof rests with the covered jurisdiction—a position well supported by this Court's decisions, see pp. 17-19, *supra*—and the government has never assumed the burden of proof on that issue.

B. Although, as we have shown, the burden of proof in preclearance cases is on the covered jurisdiction, it is important not to exaggerate the onerousness of that burden. In the litigation context, that burden means simply that the jurisdiction must establish to the satisfaction of the preclearance court by a preponderance of the evidence that its plan does not have a discriminatory purpose and will not have a retrogressive effect. See *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991) (preponderance-of-evidence standard is presumed to govern in civil cases); see also *City of Petersburg*, 354 F. Supp. at 1027 (in the first Section 5 declaratory judgment action, district court stated that "plaintiff must meet the burden placed upon it by the Voting Rights Act of proving by the preponderance of the evidence that its change" does not violate Section 5). In practical terms, the covered jurisdiction and the United States (and any party permitted to intervene, as in this case) each presents evidence to the preclearance court on the question of the jurisdiction's intent and the voting change's likely effect, and the risk of nonpersuasion falls on the jurisdiction. If the evidence is in equipoise, or if the district court is in doubt about the proper outcome, then preclearance should be denied. See *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 138-139 (1997) (where "burden of persuasion [is] on the proponent of an order," and "when the evidence is evenly balanced, the proponent loses"); cf. *O'Neal* v. *McAninch*, 513 U.S. 432, 437-438 (1995).

The Court's decision in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977), provides the framework for litigation on the question of purpose in preclearance cases, just as it does in cases in which the burden of proof rests with a party seeking to invalidate state action; the only difference in preclearance cases is that the risk of nonpersuasion in the event of equipoise or doubt falls on the covered jurisdiction. Thus, to

demonstrate the absence of discriminatory intent, the jurisdiction may explain the process by which it decided to adopt the relevant new voting practice. Following *Arlington Heights*, *id.* at 266-268, the jurisdiction may bring forward evidence on the impact of the change, the historical background of the decision, the sequence of events leading to the official action, adherence to nondiscriminatory factors ordinarily considered important by the decisionmaker and to procedures ordinarily followed in imposing its actions, and the legislative history, especially contemporary statements by legislators. Discovery should give the government the opportunity to test those assertions and to obtain any contrary or impeaching evidence. Just as *Arlington Heights* instructs that departures from usual substantive and procedural practices may indicate discriminatory intent, see *id.* at 267, evidence that decisions were taken in conformity with regular procedures and traditional, nondiscriminatory substantive priorities can assist a jurisdiction in demonstrating that a new voting practice lacks an invidious purpose.

In the administrative preclearance process, the Attorney General applies a burden of proof similar to that applied by the preclearance court. See 28 C.F.R. 51.52(a). The history of Section 5 enforcement demonstrates, however, that this burden of proof has not created any undue obstacle to preclearance of covered jurisdictions' new voting practices. Covered jurisdictions continue to choose the administrative process for the vast majority of voting changes; our records show that only 62 declaratory judgment preclearance actions have been filed since Section 5 was enacted. Further, the Attorney General interposes no objection to the great majority of submissions. Although the Department of Justice has received approximately 333,390 voting changes submitted for preclearance review from the Act's enactment to July 22, 1999, the Attorney General has interposed objections to fewer than 1% (3,071) of those changes. The majority of

those objections (about 60% of those made in the 1990s) appear to have been made on the basis of discriminatory, but nonretrogressive, purpose. The fact that the Department has objected to only 3,071 new voting practices in more than 30 years indicates that the Department's preclearance procedures are effective at identifying those voting changes where there is reason to believe that an invidious purpose is afoot without being unduly onerous to jurisdictions. See S. Rep. No. 417, at 49 (Senate report recommending extension of Act in 1982 found that Department does not unduly burden jurisdictions when reviewing changes submitted for preclearance).

Further, the Department's published procedures for preclearance submissions provide jurisdictions with substantial guidance in establishing that their proposed voting changes do not have a discriminatory purpose and will not have a retrogressive effect. The procedural guidance informs jurisdictions of the kind of information that is needed to facilitate the Attorney General's review. See 28 C.F.R. 51.27, 51.28. The procedures are specifically designed to elicit information bearing on the *Arlington Heights* factors for determining whether a new voting practice has been enacted with an unconstitutional, discriminatory purpose.[12] Moreover, when the

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[12] Thus, with regard to the impact of the plan (which this Court has identified as the "important starting point" for discerning invidious discriminatory purpose, 429 U.S. at 266), the Department asks for information about the "anticipated effect of the change on members of racial or language minority groups," 28 C.F.R. 51.27(n), as well as demographic and geographical information about the proposed change, *id.* § 51.28(a) and (b). The Department's procedures also inform jurisdictions that the historical background will be considered when evaluating the submissions. See *id.* § 51.58(b). To evaluate the "sequence of events" leading to the proposed voting change, the procedures explain that the Department will consider whether the jurisdiction followed "objective guidelines and fair and conventional procedures in adopting the change," *id.* § 51.57(b), and the extent to which the jurisdictions afforded members of racial minority

Department receives a submission, it does not immediately proceed to a determination whether the jurisdiction has met its burden of proof or interpose an objection in the event the jurisdiction has failed to submit certain relevant information. When additional information is necessary to complete the review, the Department's practice is to notify submitting jurisdictions of that fact as promptly as possible, and to provide them with the opportunity to supply such additional information before a determination is made. See 28 C.F.R. 51.37(a) and (d).

C. Under the principles discussed above, the district court erred in granting preclearance in this case. To the extent the district court may have considered whether appellee's 1992 redistricting plan lacked a discriminatory (but nonretrogressive) purpose, its analysis of that point is inconsistent with the placement of the burden of proof on appellee. The district court stated that "the record will not support a conclusion that extends beyond the presence or absence of retrogressive intent." J.S. App. 3a. If the record "will not support a conclusion" by the court on the question of a discriminatory but nonretrogressive purpose, however, then the risk of nonpersuasion should fall on the covered jurisdiction, not the government and the intervenors. The district court also stated that it could "imagine a set of facts that would establish a 'non-retrogressive, but nevertheless discriminatory, purpose,' but those imagined facts are not present here." *Id.* at 3a-4a. The question before the district court, however, was not whether the proffered facts established a discriminatory purpose, but whether they established the *absence* of a discriminatory purpose.[13] Any finding made by the district court that appellee acted without a discriminatory purpose, therefore, cannot be sustained on appeal.

groups an opportunity to participate in the decision, *id.* § 51.57(c). The procedures also request evidence of contemporary statements by legislators, by asking the jurisdictions to submit "[m]inutes or accounts of public hearings concerning the proposed change," *id.* § 51.28(f)(3).

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

JULY 1999

[13] Moreover, as we have explained (Opening Br. 45; Reply Br. 13), a finding by the district court that appellee did not enact its redistricting plan with a discriminatory, nonretrogressive purpose (if such a finding was in fact made) would be clearly erroneous and could not be squared with numerous other findings made by that court. See J.S. App. 7a (appellee had "tenacious determination to maintain the status quo"; evidence "establishes rather clearly that [appellee] did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise"). At a minimum, evidence that appellee purposefully resisted further improvement in black voting strength would rebut appellee's contention that it acted without a discriminatory intent. The district court appears to have evaluated that evidence, however, only to the extent that it might have shown that appellee acted without a *retrogressive* intent. See *ibid.* In addition, on the prior appeal in this case, this Court stated that the district court should consider on remand the government's contention that appellee had violated an injunction to remedy vestiges of its segregated school system. *Id.* at 50a- 51a. The district court's opinion on remand, however, addressed evidence on that point only with respect to retrogressive intent, *id.* at 7a, and not a broader discriminatory intent. Evidence of appellee's violation of a school desegregation decree is surely a fact that would tend to rebut appellee's contention that its 1992 redistricting plan does not have a discriminatory purpose.

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IN THE

Supreme Court of the United States

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

SUPPLEMENTAL BRIEF ON REARGUMENT OF APPELLANTS GEORGE PRICE, *ET AL.*

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IN THE

Supreme Court of the United States

Nos. 98-405 & 98-406

JANET RENO, ATTORNEY GENERAL OF
THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

**On Appeal from the
United States District Court
for the District of Columbia**

SUPPLEMENTAL BRIEF ON REARGUMENT OF APPELLANTS GEORGE PRICE, *ET AL.*

This Court's Order of June 24, 1999, directs the parties to file supplemental briefs addressing the following questions:

1. Does the purpose prong of § 5 of the Voting Rights Act of 1965 extend to a discriminatory but non-retrogressive purpose?

2. Assuming *arguendo* that § 5 prohibits the implementation of a districting plan enacted with a discriminatory, non-retrogressive purpose, does the government or the covered jurisdiction bear the burden of proof in this issue?

Section 5 itself, its history, and this Court's teachings on the "purpose" prong of § 5 all support an affirmative response to the first question. A voting change enacted with a discriminatory but non-retrogressive purpose is foreclosed from § 5 preclearance.

In response to the second question, the covered jurisdiction bears the burden of proving that any voting change, whether retrogressive or not, is nondiscriminatory. This Court's decisions, § 5 and its legislative history, and general principles regarding the allocation of the risk of nonpersuasion all support this conclusion. This also is a fair and reasonable burden to place on covered jurisdictions. The prima facie showing of nondiscriminatory purpose that should be expected of the covered jurisdiction is modest, requiring evidence that legitimate, verifiable reasons, not involving racial animus, motivated the proposed voting change. The Attorney General and any intervening defendants should have the obligation to bring forward in the first instance any evidence of racially discriminatory intent. Covered jurisdictions, where such evidence of discriminatory purpose is proffered, have the opportunity and obligation to rebut it in order to obtain preclearance.

I. THE PURPOSE PRONG OF § 5 OF THE VOTING RIGHTS ACT OF 1965 EXTENDS TO A DISCRIMINATORY BUT NON-RETROGRESSIVE PURPOSE.

Section 5 of the Voting Rights Act of 1965 requires states or political subdivisions identified by criteria specified in the Act to obtain a declaratory judgment in the United States District Court for the District of Columbia that any change in a voting "qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 244a-245a).[1]

[1] "App." refers to the separately bound Appendix to the Jurisdictional Statement filed on behalf of Janet Reno in No. 98-405.

Alternatively, such voting changes may be precleared by submission to the Attorney General. *Id.*

From this Court's earliest consideration of the Act, it has identified § 5 as a key element in the protections carefully designed by Congress to eradicate racial discrimination in voting that impairs the free and equal participation of African-Americans and other minorities in the political process. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 315-16, 319-20 (1966). When this Court in *Katzenbach* upheld the power of Congress to enforce the Fifteenth Amendment through the Voting Rights Act of 1965, it closely reviewed the extensive hearings, testimony, and floor debate that formed the factual basis for the "overwhelming" assessment of both chambers of the Congress that strong action was needed. *Id.* at 309. The Court summarized the factual points that "emerge[d] vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates[:]

> First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment."

Id. Section 5 thus stands on a remedial footing, based on the extensive factual record that undergirds the Voting Rights Act. *United Jewish Orgs. of Williamsburgh, Inc.* v. *Carey*, 430 U.S. 144, 156-57 (1977).

Congress further "found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." *Katzenbach*, 383 U.S. at 328 (footnote omitted). Case-by-case litigation under previous statutes attempting to secure Fifteenth Amendment rights "proved ineffective" because it was burdensome and

slow. *Id.* at 314. Even when plaintiffs succeeded in obtaining judgments outlawing racially discriminatory voting practices, "some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration." *Id.* (footnote omitted).

Congress required covered jurisdictions to demonstrate that each voting change "does not have the purpose *and* will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (App. 244a-245a) (emphasis added). "By describing the elements of discriminatory purpose and effect in the conjunctive, Congress plainly intended that a voting practice not be precleared unless *both* discriminatory purpose and effect are absent." *City of Rome* v. *United States*, 446 U.S. 156, 172 (1980) (emphasis in original); *accord Lopez* v. *Monterey County*, 119 S. Ct. 693, 703 (1999) ("once a jurisdiction has been designated, [§ 5 of] the Act may guard against both discriminatory animus and the potentially harmful *effect* of neutral laws in that jurisdiction") (emphasis in original).

In defining the "effect" prohibited by § 5 as a retrogressive one, the Court carefully preserved the vitality of the "purpose" prong to reach any voting change motivated by racially discriminatory animus: "We conclude . . . that such an ameliorative new legislative apportionment cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

Beer construed the word "effect" in § 5 to mean only a retrogressive impact. Because the Court took care to preserve the possibility that a discriminatory purpose could motivate a voting change that creates no retrogression, *Beer* does not limit the universe of voting changes "denying or abridging the right to vote on account of race or color" only to those that involve retrogression. *Accord City of Richmond* v. *United States*, 422 U.S. 358, 378-79 (1975) ("annexation proved to be [animated by a discriminatory purpose] and not

proved to have a justifiable basis is forbidden by § 5, whatever its actual effect may have been or may be"); *City of Port Arthur* v. *United States*, 459 U.S. 159, 168 (1982) (an electoral scheme that "might otherwise be said to reflect the potential strength of the minority community . . . would nevertheless be invalid if adopted for racially discriminatory purposes").

Based on this solid foundation, this Court, in *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987) and *Busbee* v. *Smith*, 459 U.S. 1166 (1983), rejected voting changes that were demonstrated to be infected with a racially discriminatory purpose although they lacked a retrogressive effect. The Court's rejection of preclearance in both cases could only have been based on the conclusion that § 5 bars preclearance of voting changes adopted with racially discriminatory purpose even if the effect is non-retrogressive, since the trial courts in both cases found no retrogression. *See City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458-59 (D.D.C. 1983) (rejecting argument by covered jurisdiction that annexation could have no discriminatory purpose because it had no discriminatory effect); *Busbee* v. *Smith*, 549 F. Supp. 494, 516 (D.D.C. 1982) ("the voting plan does not have a discriminatory effect, as that term has been construed under the Voting Rights Act") (citations omitted).

The practical application of the statute makes clear why "purpose" in § 5 encompasses any racially discriminatory purpose to deny or abridge the right to vote regardless of whether the enacting body intends retrogression. If "purpose" were limited to "retrogressive intent," the purpose and effect prongs would cover virtually the same set of voting changes. Voting changes that "hold the line" on minority electoral participation, even if that line is held at a deliberately and discriminatorily low level, would be required to be precleared, even if they were adopted with blatantly racist intent.

Put another way, limiting "purpose" to purpose to retrogress elevates to nearly dispositive significance the "effect" factor in the analysis under *Village of Arlington*

Heights v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977). The Court has made clear in this case that the *Arlington Heights* analysis should guide the § 5 inquiry into whether a voting change has the purpose of denying or abridging the right to vote on account of race or color. *Reno* v. *Bossier Parish Sch. Bd.*, 520 U.S. 471, 488-89 (1997); App. 48a ("*Bossier I*"). The effect of a voting change—whether it is positive, negative or neutral in its impact on racial minorities—is a salient factor in determining whether the change was adopted with a racially discriminatory intent. Impact, however, "'is not the sole touchstone of an invidious racial discrimination.'" *Arlington Heights*, 429 U.S. at 265, (quoting *Washington* v. *Davis*, 426 U.S. 229, 242 (1976)). Limiting "purpose" to "intent to retrogress" would effectively limit the *Arlington Heights* inquiry to the "effect" factor.

Limiting "purpose" to "intent to retrogress" also may foreclose meaningful preclearance review of voting changes that clearly are subject to preclearance under § 5 but that do not lend themselves readily to vote dilution or other mathematical analyses. *See, e.g., Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32 (1978) (change in leave policies for employees who work in political campaigns is subject to § 5 preclearance); *Hadnott* v. *Amos*, 394 U.S. 358 (1969) (same with respect to change in filing provisions for independent candidates). If the effect of each change were to become essentially dispositive, because the search for discriminatory purpose was limited to a search for intent to retrogress, it is unclear what proof would be probative in a § 5 declaratory judgment action seeking preclearance of this type of change.

For all of these reasons, the simplest and most direct understanding of the plain language of § 5 is also the correct one: A voting change adopted with the purpose of discriminating on the basis of race or color should be denied preclearance.

II. THE COVERED JURISDICTION BEARS THE BURDEN OF PROOF TO SHOW THAT ITS DISTRICTING PLAN WAS ENACTED WITHOUT A DISCRIMINATORY PURPOSE.

This Court repeatedly has ruled that the covered jurisdiction bears the burden of proof, *i.e.*, the risk of non-persuasion, in a § 5 declaratory judgment action on the issue of whether a voting change was animated by a racially discriminatory purpose. This principle is rooted in the terms of § 5, which require the covered jurisdiction to take the initiative to file the declaratory judgment action or administrative preclearance request for a ruling that the voting change "does *not* have the purpose and will *not* have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c, App. 244a-245a (emphases added). The requirement that the covered jurisdiction carry the burden of proof also is supported specifically by the history of § 5, as well as the more general framework for allocating burdens of proof in civil litigation.

A. In *Katzenbach*, this Court upheld the constitutionality of the Voting Rights Act "putting the burden of proof on the areas seeking relief" under § 5 in the form of a declaratory judgment preclearing a voting change. 383 U.S. at 335. The Court has elaborated that "[i]t is well established that in a declaratory judgment action under § 5, the plaintiff State has the burden of proof," because "[t]he very effect of § 5 was to shift the burden of proof with respect to racial discrimination in voting." *Georgia* v. *United States*, 411 U.S. 526, 538 & n.9 (1973).

Because § 5 "is predicated on the congressional finding that there is a risk that covered jurisdictions may attempt to circumvent the protections afforded by the Act," § 5 incorporates procedural protections to avoid evasion including the fact that "the burden of proof (the risk of non-persuasion) is placed upon the covered jurisdiction." *McCain* v. *Lybrand*, 465 U.S. 236, 257 (1984). Indeed, the Court has identified the "shift" in the burden of proof—from a plaintiff in the usual case challenging state action as violative of the Constitu-

tion to the covered jurisdiction in a § 5 action showing that a proposed voting change is non-discriminatory—as a respect in which § 5 reaches more broadly than the Fifteenth Amendment itself. *Beer*, 425 U.S. at 147-48.

The rule that the burden of proof rests with the covered jurisdiction is the same for consideration of both the "effect" and "purpose" prongs of § 5: "Under § 5, the [covered jurisdiction] bears the burden of proving lack of discriminatory *purpose and effect*." *City of Rome*, 446 U.S. at 183 n.18 (emphasis added) (citations omitted). *Accord McDaniel* v. *Sanchez*, 452 U.S. 130, 137 (1981). Where the Court has faced the issue of purpose alone, it has stressed that the covered jurisdiction "has the burden of proving the absence of discriminatory purpose respecting voting." *City of Pleasant Grove*, 479 U.S. at 472 n.12 (emphasis omitted).

B. Congress carefully and deliberately placed the burden of proof on covered jurisdictions. The House Report on the reauthorization of the Voting Rights Act in 1970 and the Senate Report on the 1982 reauthorization reflected on the burden of proof in light of the Court's decision in *Allen* v. *State Bd. of Elections*, 393 U.S. 544 (1969):

> The decision underscores the advantage section 5 produces in placing the burden of proof on a covered jurisdiction to show that a new voting law or procedure does not have the purpose and will not have the effect of discriminating on the basis of race or color. . . . Failure to continue this provision of the act would jettison a vital element of the enforcement machinery. It would reverse the burden of proof and restore time-consuming litigation as the principal means of assuring the equal right to vote.

H.R. Rep. No. 91-397, at 8 (1969), quoted in Joint Views of Ten Members of the [Senate] Judiciary Comm., 91st Cong., 2nd Sess., 115 Cong. Rec. 5521 (1970),[2] and Report of the

[2] "Those ten members of the Committee, including Senators Hugh Scott and Robert Griffin, sponsored the Scott-Hart extension of the Act which became law. The Supreme Court has cited their views as the committee report on the bill which was enacted.

Comm. on the Judiciary on S.1992, S. Rep. No. 97-417, at 7 (1982).

When Congress first reauthorized the Voting Rights Act, it specifically rejected proposed amendments which would have placed the burden of proof on the Attorney General. *See* 116 Cong. Rec. 6515-22 (1970). *See also Hearings on H.R. 4249, H.R. 5538, and Similar Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong. 289-90 (1969). Congress' careful consideration and rejection of these provisions demonstrate its unmistakable intent to place the burden on the covered jurisdictions. *See, e.g.*, 116 Cong. Rec. 6168 (1970); 116 Cong. Rec. 6624-25, 6644 (1970).

Congress intended that the burden of proof be on the covered jurisdiction and so provided in the Act. Its conclusion is owed deference because it is clear and constitutional, as this Court held in *Katzenbach*. The result Congress reached also is sound because it corresponds with the principles that courts and commentators routinely invoke to determine who should have the risk of nonpersuasion.

C. Even if it were not already well-established that covered jurisdictions bear the burden of proof in § 5 declaratory judgment actions, general principles governing the allocation of burdens of proof would support the determination made by Congress to place that burden on covered jurisdictions in § 5 actions. Generally speaking, the risk of nonpersuasion falls on the plaintiff, whether the action seeks damages, injunctive relief, or a declaratory judgment. *See* 2 *McCormick on Evidence* § 337 at 427 (4th ed. 1992). Indeed, a "well-developed line of authority . . . holds that a plaintiff in a declaratory action who voluntarily goes forward and attempts to prove his case will be held to have assumed the risk of nonpersuasion." 10B Charles Alan Wright, Arthur R. Miller

Seven of the ten Senators had been sponsors in 1965 of S.1564, the bill enacted as the Voting Rights Act." Report of the Comm. on the Judiciary on S.1992, S. Rep. No. 97-417, at 7 n.10 (1982).

& Mary Kay Kane, *Federal Practice and Procedure* § 2770, at 679-80 (1998) (footnote omitted).

No one theory or rule circumscribes the allocation of the risk of nonpersuasion where the burden of proof is not already determined by statute, as it clearly is in § 5. *See* 9 John Henry Wigmore, *Evidence in Trials at Common Law* § 2486, at 292 (Chadbourn rev. 1981). In allocating this burden, courts weigh the character of the issues, the pleadings, and applicable substantive law. Over time, a framework has emerged that considers factors which can be grouped into the categories of probability, fairness, and policy. *See Basic Inc.* v. *Levinson*, 485 U.S. 224, 245 (1988) (citing considerations of "fairness, public policy, and probability" in applying presumption of reliance in fraudulent misrepresentation securities case); Fleming James, Jr. and Geoffrey C. Hazard, Jr., *Civil Procedure* § 7.8 (3rd ed. 1985); 2 *McCormick* § 337, at 432; 21 Charles Alan Wright and Kenneth W. Graham, *Federal Practice and Procedure* § 5122 (1977). Each of the three prongs—fairness, probability and policy—supports Congress' determination to place the burden of proof in § 5 declaratory judgment actions on the covered jurisdictions.

The "fairness" factor involves consideration of which party has the best access to information and control over the evidence. *See* James at § 7.8; 2 *McCormick* § 337, at 429-30. In a § 5 preclearance action, there is no question that the covered jurisdiction is in the best position to bring forward the evidence that is probative on *Arlington Heights* factors. This evidence involves not only the anticipated effect of the voting change, but the historical background of the adoption of the change, the specific sequence of events leading to the decision, consistency with—or departures from—ordinary procedures and substantive considerations, and contemporary statements of participants in the process. *Arlington Heights*, 429 U.S. at 267-68.

This superior access to probative evidence was part of the basis for allocating the burden of proof to the covered jurisdiction seeking a § 5 declaratory judgment. During the

1970 reauthorization debate, Senator Fong explained: "The . . . burden of proof is placed upon the jurisdiction to show that the new voting law or procedure does not have the purpose or effect of discriminating. Those who know the law or procedure best and what motivated its passage must come forward and explain it." 116 Cong. Rec. 6154 (1970). Representative McCulloch, ranking minority member of the House Judiciary Committee, explained during the floor debate: "The burden of proof under section 5 is rightfully placed upon the jurisdiction to show that the new voting law or procedure is not discriminatory. As in tort law, when circumstances give rise to an inference that there has been misconduct, the party that has access to the facts is called upon to rebut the inference and show that its conduct was proper." 115 Cong. Rec. 38486 (1969).

The second general factor considered in allocating burdens of proof is a judicial estimate of the probabilities, which involves deciding which party's contention is the more extreme departure from the norm. *See* James at § 7.8; 2 *McCormick* § 337, at 430. In a § 5 declaratory judgment action, the covered jurisdiction is before the district court because Congress has found that jurisdictions with specific characteristics had deliberately tried to keep African-Americans and other minorities from the effective exercise of the franchise. *Katzenbach*, 383 U.S. at 308-15. Since Congress found that voting changes proffered by such a jurisdiction are relatively likely to be discriminatory, the burden was placed on the covered jurisdiction to show that a particular proposed change is not.

Policy considerations constitute the third factor in the allocation of burdens of proof. Congress considered policy matters in determining this question for purposes of § 5. First, as noted above, based on the history of discrimination in voting practices and the failure of case-by-case adjudication to stem Fifteenth Amendment violations in voting, *see supra* 3-4, Congress placed the ultimate burden of persuasion on covered jurisdictions. Second, as this Court has recognized, such a statutory scheme is fundamentally fair

to covered jurisdictions. *See Katzenbach*, 383 U.S. at 331-32 (discussing bailout provisions of the Act). *See also infra* Part D. As enacted, § 5's procedures and burdens parallel those that covered jurisdictions must face in order to lift § 5 coverage entirely. A state or political subdivision defined within the Act as a jurisdiction required to seek preclearance of voting changes under § 5 can "bail out" of that coverage through a declaratory judgment procedure under § 4 of the Voting Rights Act, 42 U.S.C. § 1973b(a). This Court has made clear that the burden of proof on a covered jurisdiction in order to obtain an end to the preclearance requirement was not intended to be onerous: "[A]n area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government." *Katzenbach*, 383 U.S. at 332 (footnote omitted).[3]

Nearly 35 years have passed since the adoption of the Voting Rights Act of 1965. Discriminatory efforts to keep African-Americans and other minorities from being heard at the polls are certainly less overt and no doubt less frequent than they were when this Court decided *Katzenbach*. Congress has not changed either the coverage standard or the burden of proof allocation under § 5, based on its judgment that the preclearance process, with its burden of proof on the covered jurisdiction, remains important to the enforcement of the Fifteenth Amendment and the equitable availability of the franchise. The judgment of the particular means to be employed to achieve the legitimate and important end of making the promise of the Fifteenth Amendment a reality is the province of Congress. Nothing in the language it has used or the history of the Act suggests that Congress thought some different allocation of the burden of proof would result where a voting change is non-retrogressive.

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[3] The current Voting Rights Act requires proof that the covered jurisdiction has not engaged in racial discrimination in voting for the past 10 years. 42 U.S.C. § 1973b(a).

D. The juxtaposition of the two questions on which the Court directed supplemental briefing suggests an interest in having the parties address whether it is fair and realistic to place the burden of proof on the covered jurisdiction to obtain a § 5 declaratory judgment for a voting change that is neutral or ameliorative in effect. Given the sequence of proof that unfolds in a § 5 preclearance declaratory judgment action, as a practical matter, Congress and the Court have been correct and reasonable in allocating the burden of proof to the covered jurisdiction in all § 5 cases.

As the plaintiff, the covered jurisdiction has the burden of production in its case in chief to put on evidence that its proposed voting change does not have a racially discriminatory purpose or effect. In a case such as this, the covered jurisdiction can make out a prima facie case on the issue of retrogression, and therefore the "effect" prong of § 5, by putting into evidence statistics showing the racial composition of its proposed election districts compared to those in its existing plan.

The question then becomes what evidence the covered jurisdiction must produce concerning the "purpose" of its proposed voting change in order to survive a motion for judgment as a matter of law at the close of its case. *See* Fed. R. Civ. P. 52(c). In its first opinion in this case, the district court described the sequence of proof that it expects:

> To make out a *prima facie* case for preclearance, the School Board must demonstrate that the proposed change will have no retrogressive effect, and that the change was undertaken without a discriminatory purpose. Proof of nondiscriminatory purpose must include "legitimate reasons" for settling on the given change. *Richmond* v. *United States*, 422 U.S. 358, 375 (1975).

App. 105a. When the covered jurisdiction, through credible evidence, demonstrates "objectively verifiable, legitimate reasons" for the proposed non-retrogressive voting change in its case in chief, *City of Richmond*, 422 U.S. at 375, it should

survive a motion for judgment as a matter of law at the close of its case.

Just as in the bailout procedure, the burden of production then shifts to the Attorney General and any intervening defendants to point to evidence that racial animus was a motivating factor in the adoption of the voting change. *See Katzenbach*, 383 U.S. at 332. If the defendants fail to come forward with any evidence, and if the evidence of non-racial purpose offered by the covered jurisdiction is legitimate and credible, the covered jurisdiction should prevail and be granted preclearance. If the defendants come forward with evidence from which racial intent can be inferred, within the framework contemplated by *Arlington Heights*, the three-judge court must make findings on whether intent to discriminate was a motivating purpose in the adoption of the voting change. *See* App. 103a-104a. If the covered jurisdiction has not succeeded in refuting the proof of racial intent or if the evidence on discriminatory purpose is in equipoise, preclearance should be denied.

This simple and sound sequence of proof is very fair to covered jurisdictions. It is the covered jurisdiction, after all, that knows why it wants the voting change. If its actual reasons are sound, non-racial, and legitimate, it should take no substantial effort for the covered jurisdiction to explain them. All that the initial burden of production usually requires is that the jurisdiction repeat in court its analysis, reasoning, and judgment in originally developing and adopting the proposed change.

By placing on the Attorney General and other defendants the burden of initially identifying evidence of racial intent, the presentation in § 5 cases of evidence of discriminatory purpose under the *Arlington Heights* framework is logical and fair. The Attorney General and other defendants who wish to introduce evidence from which an inference of racial purpose may be drawn should have to shape the case on racial intent so that covered jurisdictions know what evidence they must rebut. In other words, the covered jurisdiction

should not have to come forward in its case in chief and negate each factor in the *Arlington Heights* framework.

This case demonstrates the operation of this approach. The Bossier Parish School Board asserted a variety of reasons at various points in this proceeding for its 1992 districting plan. By the time of trial, it claimed that it adopted the same plan as the Police Jury because that plan eliminated consideration of precinct splitting and maximized the prospects for preclearance. *See* App. 106a-108a. The School Board established a prima facie case by articulating non-racial reasons that, if true and proven, could be legitimate reasons for adopting the plan.

The Attorney General and Price intervenors then produced evidence to demonstrate, however, that these were not the real reasons the plan was adopted. That evidence demonstrated that the School Board declined to seek precinct splits to accommodate a districting plan that did not dilute minority voting strength, even though it had previously contemplated doing so for other reasons.[4] The evidence also showed that the School Board intended in its redistricting to adopt a plan different from the Police Jury, even after the Police Jury obtained preclearance. The Attorney General and the intervening defendants also presented extensive evidence of the School Board's historical racial discrimination in voting; its strong motivation to avoid meaningful representation of majority black communities in order to sustain its resistance to school desegregation; and its departures from ordinary districting principles and procedures in the adoption of the 1992 plan.[5] This evidence surely presented a factual question as to whether the School Board's adoption of the 1992 plan was motivated by a racially discriminatory intent.

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[4] The evidence on these issues is reviewed in the Brief of Appellants George Price, *et al.*, ("Price Brief") at 33-37 and in the Reply Brief of Appellants George Price, *et al.*, ("Price Reply Brief") at 11-14.

[5] Price Brief at 27-40; Price Reply Brief at 10-19.

The School Board has the burden of proving that its claimed non-racial reasons for adopting the plan were genuine and legitimate and that the plan was not motivated by the racial animus supported by defendants' proof. The District Court's decision, however, is plainly inconsistent with this allocation of the risk of nonpersuasion. While the court below found "powerful support for the proposition that [the Board] in fact resisted adopting a redistricting plan that would have created majority black districts," including its history of resistance to school desegregation, App. 6a-7a, and "a tenacious determination to maintain the status quo," *id.* at 7a, it nevertheless granted preclearance. The majority below did so because it found the proof of discriminatory purpose insufficient "to rebut the School Board's *prima facie* showing *that it did not intend retrogression.*" *Id.* (emphasis added). But, as demonstrated in Section I above, this was not the proper inquiry because the purpose prong of § 5 extends to a discriminatory but non-retrogressive purpose. The District Court failed to analyze whether the School Board had established that it did not have a discriminatory, though non-retrogressive, purpose. On this record, it is clear that the School Board did not meet this burden.

CONCLUSION

For these reasons and those set forth in the original briefs in this matter, this Court should reverse the judgment below.

Respectfully submitted,

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BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF ON REARGUMENT FOR THE FEDERAL APPELLANT

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In the Supreme Court of the United States

No. 98-405

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF ON REARGUMENT FOR THE FEDERAL APPELLANT

1. *The Proper Scope of Section 5*

a. Appellee contends (Bd. Br. 1-4)[1] that the purpose prong of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, bars only new voting practices with the purpose to worsen the electoral position of minorities, and that this limitation is found in the statutory term "abridge." Contary to appellee's contention (Bd. Br. 9), however, this Court has never held that "abridge" in Section 5 refers only to retrogression. As we have pointed out (Gov't Rearg. Br. 3-4), such a construction would be untenable, for Sections 2(a) and 3(c) of the Act also use "abridge," see 42 U.S.C. 1973(a), 1973a(c), and yet those provisions are not limited to prohib-

[1] In this brief, "Bd. Br." refers to appellee's principal brief filed on reargument; "Gov't Rearg. Br." refers to the government's principal brief filed on reargument; and "Gov't Opening Br." refers to the government's original brief on the merits filed in March 1999.

iting retrogression. Further, Section 5 was phrased to echo the Fifteenth Amendment, which provides that the right to vote "shall not be denied or abridged" on account of race, U.S. Const. Amend. XV, § 1, but it could not be seriously maintained that the Fifteenth Amendment prohibits only retrogressive practices.[2]

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[2] To avoid the problem that "abridge" in the Fifteenth Amendment is not limited to retrogression, appellee suggests that "abridge" as used in the Amendment necessarily requires another kind of comparison, namely, a comparison of a racially discriminatory voting practice to a specific, hypothetical state of enhanced minority voting strength (Bd. Br. 4). That argument is incorrect. Although the specific concept of *vote dilution* requires comparison to an undiluted state, see *Holder* v. *Hall*, 512 U.S. 874, 880 (1994) (opinion of Kennedy, J.), it is quite possible to find an unconstitutional impairment of voting rights on account of race without pointing to a specific, alternative, nondiscriminatory state. For example, if a State were to create a new political entity with boundaries similar to those in *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), those boundaries would demonstrate the existence of a racially discriminatory purpose, even if it was not certain what lines the State would have drawn if it had acted without a discriminatory purpose.

Under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the relative impact of any decision on minority and white voters is an "important starting point" for determining the existence of discriminatory intent, *id.* at 266-267, but it is not the entirety of the analysis, and *Arlington Heights* does not require a comparison with an ideal, nondiscriminatory state as a predicate to a finding of discriminatory intent. Of course, the presence of a readily apparent nondiscriminatory alternative might be important evidence that the State had engaged in racial discrimination, but it is the infection of the jurisdiction's decisionmaking by a racially discriminatory purpose, rather than a contrast with an ideal state, that supplies the constitutional violation. Indeed, it is well established that an unconstitutional impairment of the right to vote on account of race may be found even when it would be permissible for the jurisdiction to accomplish precisely the same result for racially neutral reasons. See Gov't Rearg. Br. 8. Conversely, discriminatory intent is not established by the mere fact that a voting plan has a relatively adverse impact on minorities (much less by the fact that the plan fails to maximize the voting strength of minorities). There may be many nondiscriminatory reasons why a jurisdiction might fail to adopt a voting practice that would enhance minority voting strength. The jurisdiction might be pursuing traditional, nondiscriminatory priorities, or the possibility for minority enhancement might not be readily apparent because minority citizens might not draw attention to it. Appellee therefore seriously errs in arguing (Bd. Br. 11) that effect counts for everything, and purpose for little if anything, in voting rights.

Appellee also suggests (Bd. Br. 4-6) that Section 5 could not have been intended to prevent the perpetuation of unconstitutional discrimination because it is reactive to changes proposed by a covered jurisdiction. Appellee reasons that, if preclearance were denied on the ground that the new voting practice would perpetuate discrimination, the denial would simply leave the prior discrimination in place. That argument ignores the reality of most changes to election laws, which are set in motion by a need to address some change in circumstances. Redistricting (as in this case) provides a useful example. Appellee was under a constitutional obligation to redistrict because its 1980s plan was malapportioned. Section 5 prevented it from adopting a plan with a racially discriminatory purpose. The constitutional imperative of reapportionment, however, prevented it from doing nothing.[3]

b. Appellee's effort to distance Section 5 from the Constitution leads it to decidedly odd assertions about the function

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[3] In many situations, a covered jurisdiction may be determined or may find itself compelled to change its voting practices because of some new priority or objective, or some change in circumstances. In *Lopez* v. *Monterey County*, 119 S. Ct. 693 (1999), for example, the changes in Monterey County's system of electing judges requiring preclearance were undertaken pursuant to a statewide policy of court consolidation. The option of remaining in place, *i.e.*, retaining a bifurcated court system, was neither realistic nor desired by either the State or the County. Section 5, however, was enacted to ensure that the consolidation (and similar changes to election laws) could not be used to further discrimination.

that Congress intended for the preclearance remedy. Appellee suggests (Bd. Br. 7) that Congress intended the elimination of discrimination to be accomplished entirely by the suspension of tests and devices in Section 4 of the Act, 42 U.S.C. 1973b, and designed Section 5 preclearance merely as a backstop against any retrogression from the new and improved, nondiscriminatory state. That argument is misconceived. As we have explained (Gov't Rearg. Br. 10-13), Congress has always understood Section 5 as preventing both retrogression and conscious attempts to perpetuate discrimination by new means. Thus, when Congress reenacted Section 5 in 1970, it was well aware that Section 4 had not by itself eliminated all racially discriminatory infringements of the right to vote, and the House Judiciary Committee stated that extension of Section 5 was "essential" both to safeguard gains achieved and "to prevent future infringements of voting rights based on race or color." H.R. Rep. No. 397, 91st Cong., 1st Sess. 5 (1969); see also *City of Rome* v. *United States*, 446 U.S. 156, 182 (1980).

Appellee further argues (Bd. Br. 12 n.6) that, although there were jurisdictions that had successfully prevented *any* black citizens from registering or voting in their elections before Section 5 was enacted, it would nonetheless have been theoretically possible for those jurisdictions to bring about retrogression. According to appellee, in sum, no matter how bad things were in 1965, they could always have been worse. But even if we assume *arguendo* that a jurisdiction that had for years successfully prevented a single black citizen from registering to vote might somehow have brought about a further erosion of blacks' right to vote, it is scarcely conceivable that Congress intended Section 5 to have only the minuscule function of barring such "retrogression." By that hypothesis, Section 5 would have been least significant in the jurisdictions with the worst history of official racial discrimination in voting.

c. Appellee also strains to avoid the import of this Court's precedents. Concerning *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987), appellee speculates that Pleasant Grove's annexation of an all-white enclave might have been intended to cause retrogression because, appellee asserts (Bd. Br. 20), Pleasant Grove had 32 black residents. But every Justice on this Court, as well as the district court, decided *Pleasant Grove* on the assumption that the town was all-white at the time of the annexation, and that assumption was shared by the parties litigating the case. See 479 U.S. at 465 n.2 (opinion of the Court); *id.* at 475 (Powell, J., dissenting); *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1456 n.3 (D.D.C. 1983). Pleasant Grove's officials had been unaware of the presence of any black residents of the town, see 479 U.S. at 465 n.2, and so they could not have acted with the purpose to worsen the existing voting strength of those residents. The officials' objective was to maintain the status quo. See *id.* at 472.[4]

Appellee also misapprehends the holding of *City of Richmond* v. *United States*, 422 U.S. 358 (1975). Appellee observes (Bd. Br. 10-11) that the alleged discriminatory purpose behind the annexation at issue in that case was a purpose to reduce the voting strength of blacks in Richmond from its pre-annexation level; indeed, the Court held that, if the annexation was in fact designed for that purpose, then it should be denied preclearance—even though the very same reduction in the voting strength of blacks in Richmond was permissible under Section 5's effect prong, as applied in the annexation context. See 422 U.S. at 378. That holding of *City of Richmond*, however, conclusively demonstrates that appellee's reading of Section 5 is wrong. If appellee were

[4] See also Gov't Opening Br. 27-28 (explaining that *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd mem., 459 U.S. 1166 (1983), involved redistricting where retrogression was neither caused nor intended).

correct that the purpose and effect prongs of Section 5 must be coterminous, then *City of Richmond* could not have been correctly decided. That case stands for the proposition that a jurisdiction's "purpose" to achieve a particular outcome (there, a particular reduction in minority voting strength) may require denial of preclearance under the purpose prong, even when nonpurposeful official action with exactly the same "effect" does not require denial of preclearance under the effect prong. Thus, while appellee argues that, "[i]f the result is legitimate, it is difficult to understand why it becomes illegitimate simply because it is intended," Bd. Br. 12, the Court rejected that very position when it explained in *City of Richmond* that "it could be forbidden by § 5 to have the purpose and intent of achieving only what is a perfectly legal result under that section." 422 U.S. at 378.[5]

d. Appellee persistently accuses the Department of Justice of pursuing a "maximization" policy requiring covered jurisdictions to create as many majority-black districts as possible.[6] This case, however, has nothing to do with maximization. When the Department interposed an objection to appellee's 1992 plan, it made clear that appellee was "not required by Section 5 to adopt any particular plan." J.S. App. 235a. The Department detected a discriminatory purpose in the plan, not just because it provided for *no* majority-black districts (much less any "maximum" possible number), but also because appellee had manipulated the redistricting process to override the concerns of the black community, and had failed even to consider whether blacks would be represented fairly under the 1992 plan when (as appellee later stipulated) it was "obvious" that at least one reasonably compact, majority-black district could be drawn using traditional districting criteria. *Id.* at 154a-155a.

The Department of Justice analyzed appellee's plan under the purpose prong as it analyzes all voting changes submitted for preclearance, by applying the factors set forth in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-266 (1977). The "impact" of the plan is an "important starting point" for determining whether there is a constitutional violation, see *id.* at 266, but it is never the entirety of the purpose analysis, and in this case, other *Arlington Heights* factors are especially compelling, particularly the "sequence of events leading up to the challenged decision," see *id.* at 267. That sequence included appellee's sudden decision to sacrifice its traditional districting priorities, including incumbency protection, for a plan it had previously found ill-suited for school board elections, when it was presented with evidence that a majority-black district was feasible and desired by the black community.[7]

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[5] Appellee also relies (Bd. Br. 5) on *City of Lockhart* v. *United States*, 460 U.S. 125 (1983), for the proposition that Section 5 is concerned only with retrogression, but the Court in that case applied only the effect prong of Section 5, and not the purpose prong, see *id.* at 130 & n.4, and the Court's subsequent decision in *City of Pleasant Grove*, *supra*, made clear that the purpose prong reaches beyond a purpose to cause retrogression.

[6] Although little would be gained by recapitulating here the dispute in other cases and other records about whether the Department had engaged in such a maximization policy, we do note that this Court has made quite clear that such a policy could not be justified as a means to enforce Section 5. See *Miller* v. *Johnson*, 515 U.S. 900, 923-927 (1995).

[7] Appellee also argues (Bd. Br. 13) that "[t]he *status quo* for any redistricting plan henceforth submitted for preclearance" is "necessarily nondiscriminatory" because the Department of Justice or the preclearance court has "affirmatively found" its redistricting plans to be nondiscriminatory. That argument is flawed in several respects. First, when the Attorney General declines to interpose an objection, she does not "affirmatively find" a plan to be nondiscriminatory. She may decline to object because the evidence submitted to her does not provide a basis for suspicion of discrimination, but that may be because relevant evidence is withheld. For that reason, and others, Section 5 permits the Attorney General to

e. In the end, appellee is reduced to making arguments against Section 5 itself. Appellee argues that local federal district courts hearing conventional constitutional challenges to voting practices are better suited than the preclearance district court in the District of Columbia to evaluate the issue of a covered jurisdiction's discriminatory intent (Bd. Br. 2, 14); that authority to evaluate new voting practices for their discriminatory purpose should not be lodged with the Attorney General at all (*id.* at 17); that, by requiring the covered jurisdiction to obtain preclearance before implementing a new voting practice, Section 5 effects an unprecedented intrusion on state sovereignty (*ibid.*); and that covered jurisdictions should not be "second-class citizens who must affirmatively disprove their guilt" (*id.* at 24). These were, of course, the arguments raised against Section 5 by its opponents in Congress, but they were rejected by Congress in 1965, 1970, 1975, and 1982. They were also raised against Section 5's constitutionality in *South Carolina* v. *Katzenbach*, 383 U.S. 301, 334-335 (1966), and were rejected in that case.

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sue to enjoin a plan even if she has previously precleared it. See 42 U.S.C. 1973c.

In addition, even if a redistricting plan was adopted for nondiscriminatory reasons in 1970, 1980, or 1990, that does not mean that it is automatically nondiscriminatory to adopt a similar plan ten years later. Racial demographics in the jurisdiction may change significantly during the intervening ten years, and a jurisdiction intent on discrimination may find that minor modifications to existing district lines are sufficient to prevent any improvement in minority voting strength. In other situations, especially where the number of districts changes (for example, as a result of reapportionment following the decennial census), a jurisdiction may have ample opportunity to manipulate its boundary lines in order to prevent improvement in minority electoral opportunity, without causing retrogression. Appellee therefore errs in arguing (Bd. Br. 13-14) that, because of the anti-retrogression rule, it will be impossible for a jurisdiction to engage in intentional vote dilution after the 2000 Census.

Finally, it simply is not the case that, in 34 years of evaluating preclearance submissions for discriminatory intent, the preclearance court and the Attorney General have exercised a "standardless power" (Bd. Br. 17). Rather, the court and the Attorney General have evaluated discriminatory purpose under standards consistent with the *Arlington Heights* framework. In Section 5 declaratory judgment actions, the preclearance court has never limited its purpose analysis to a search for retrogressive purpose (other than in this case). The Attorney General's approach to the statute has been the same. See Gov't Rearg. Br. 13. Appellee has failed to show that this consistent approach over 34 years has rendered the statutory scheme unworkable or damaged the Nation's constitutional structure.

2. *Burden of Proof*

Appellee has made no argument based on the text or legislative history of Section 5 that the burden of proof on the question of purpose should rest with the government. Indeed, appellee acknowledges (Bd. Br. 24) that a covered jurisdiction has the burden of proof on the question of *retrogressive* purpose, as well as effect, and that the text of the statute requires that conclusion. But if we are correct that Section 5 forbids implementation of a new practice with a discriminatory but nonretrogressive purpose (as well as a retrogressive purpose), then it is impossible to read the statute as requiring the government to bear the burden of proof on the *nonretrogressive* purpose, while requiring the jurisdiction to prove the absence of a *retrogressive* purpose.

Appellee argues only (Bd. Br. 22-24) that, because the government previously assumed the burden to prove a "clear violation" of the "results" standard of Section 2 as a basis for denial of preclearance under Section 5, the government should be deemed to have assumed the burden of proof on the question of purpose as well. As we have explained

(Gov't Rearg. Br. 19 n.11), the government's assumption of the burden of proof on the Section 2 results issue was intertwined with its position that a clear violation of Section 2's results standard required denial of preclearance, which this Court held to be erroneous. That the government erred in one aspect of its construction of Section 5 once is hardly a basis for creating new error in the different context here. The government has always taken the position that the covered jurisdiction bears the burden of proof on purpose in Section 5 preclearance actions, and the Attorney General has consistently applied that burden of proof in administrative preclearance proceedings as well. See *Georgia* v. *United States*, 411 U.S. 526 (1973).[8] And although appellee suggests (Bd. Br. 25) that placing the burden of proof on the government is necessary to avoid constitutional doubts about Section 5, the Court long ago turned aside the argument that placement of the burden of proof on the covered jurisdictions creates any constitutional difficulty. See *South Carolina* v. *Katzenbach*, 383 U.S. at 335.

* * * * *

For the foregoing reasons, as well as those set forth in our earlier briefs, the judgment of the district court should be reversed.

Respectfully submitted.

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[8] Contrary to appellee's suggestion (Bd. Br. 25), there is nothing absurd or impractical about placing the burden of proof on the covered jurisdiction to prove both a lawful purpose and a lawful effect in administrative proceedings. As we have explained (Gov't Rearg. Br. 14-25), a burden of proof is in effect a rule of decision governing the result when the decisionmaker is in doubt or the evidence is in equipoise. A decisionmaker may use such a rule of decision even when the proceedings are less formal and adversarial than judicial proceedings.

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Solicitor General

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JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

REPLY BRIEF ON REARGUMENT OF APPELLANTS GEORGE PRICE, *ET AL.*

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I. THE COVERED JURISDICTION HAS THE BURDEN OF PROVING THAT ANY PROPOSED VOTING CHANGE LACKS A RACIALLY DISCRIMINATORY PURPOSE.

The cursory argument of the Bossier Parish School Board ("School Board" or "Appellee") that the defendants bear the burden of proving in a § 5 declaratory judgment action that a covered jurisdiction has a non-retrogressive discriminatory purpose (Appellee's Br. at 21-25)[1] is contrary to the language of the Voting Rights Act, its history, and this Court's decisions. *See Miller* v. *Johnson*, 515 U.S. 900, 924 (1995) ("the State [the covered jurisdiction] has the burden to prove a nondiscriminatory purpose under § 5"). Appellee's effort to shift the burden of proof is based principally on the incorrect premise that the Attorney General conceded the point in *Bossier I*, *Reno* v. *Bossier Parish School Board*, 520 U.S. 471 (1997), App. 29a. Appellee does not claim that the Price Appellants ever made any such "concession"; in any event Appellee's argument is incorrect because the Attorney General's brief in *Bossier I* addressed who would bear the burden of proof if a violation of § 2 established independent cause for denial of preclearance under § 5. *See* App. 29a-30a.

The School Board also mischaracterizes the dissenting opinion in *Bossier I* when it argues that the United States "has the burden to prove unconstitutional purpose in a Section 5 court, just as it would in **'any [constitutional] challenge'** in district court." Appellee's Br. at 2-3, quoting *Bossier I*, App. 69a (Stevens, J.; dissenting in part and concurring in part). The quoted statement from Justice Stevens' opinion actually refers to § 2; the same sentence expressly recognizes that the burden to prove nondiscriminatory purpose is on the covered jurisdiction:

> *While the burden of disproving discriminatory purpose* or retrogressive effect *is on the submitting jurisdiction*, if

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[1] "Appellee's Br." refers to the Brief of Appellee on Reargument; "App." refers to the Appendix to the Jurisdictional Statement in No. 98-405.

the Attorney General's conclusion that the change would clearly violate § 2 is challenged, the burden on that issue, as in **any § 2 challenge**, should rest on the Attorney General. [App. 69a, Stevens, J., dissenting in part and concurring in part (emphases added).]

II. SECTION 5 PRECLEARANCE SHOULD NOT BE GRANTED TO A PROPOSED VOTING CHANGE ADOPTED WITH A RACIALLY INVIDIOUS, BUT NON-RETROGRESSIVE, PURPOSE.

The School Board is incorrect that "no one argues that the statutory language can be consistently construed to prohibit only a retrogressive effect but simultaneously prohibit a nonretrogressive purpose." Appellee's Br. at 22 n.10. That is precisely what the United States and the Price Appellants argue, because it is the word "effect" in § 5 that has been construed to encompass only retrogressive voting changes. *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

In its effort to limit the coverage of § 5 only to retrogression, Appellee distorts the language and legislative history of the statute, twists the straightforward purpose inquiry into speculation concerning other hypothetical voting plans, expands the concept of retrogression beyond recognition, and ignores the interest of minority voters in procedural fairness. The statute and this Court's decisions call for a purpose inquiry that provides a full evidentiary examination of the proof relevant to racially discriminatory intent, unfettered by a restriction to retrogression. The Price Appellants urge the Court to reject the proposition that § 5 preclearance must be granted to a non-retrogressive voting change even if it was adopted with an invidious racially discriminatory purpose.

A. Appellants' arguments are not based on a "policy reason to stretch Section 5 to reach nonretrogressive changes motivated by a discriminatory purpose." Appellee's Br. at 2. This purpose inquiry is mandated by the statute: Section 5 requires that a covered jurisdiction demonstrate that each

voting change "does not have the purpose" of denying or abridging the right to vote on account of race.

The discourse in Appellee's Brief on the differences between a direct challenge to voting discrimination under the Fifteenth Amendment and the operation of § 5 thus is irrelevant. The School Board's citation to *Bossier I* for the proposition that "Section 5 is not and cannot be coextensive with the Constitution," Appellee's Br. at 6, citing *Bossier I*, App. 33a, is especially puzzling because, at the page cited, *Bossier I* discusses the differences between the coverage of § 2 and § 5 of the Voting Rights Act, with no reference to how § 5 corresponds with any constitutional provision.

The School Board claims that § 5 must now be reinterpreted because Congress' goal in adopting § 5 was only to prevent "'backsliding' from the improvements to the discriminatory *status quo* that would be caused by the Act's other provisions." Appellee's Br. at 7. This reading of § 5 effectively deletes the "purpose" prong. Appellants have presented in previous briefs the legislative history demonstrating that this was not intended, because Congress well knew that the status quo was rife with many kinds of discrimination that successfully prevented black voter registration and that would not be uprooted simply with the passage of these other provisions.[2] The "tests and devices" suspended by § 4 of the Act are very specifically defined: Prerequisites to registration or voting based on literacy or educational achievement, good moral character, or voucher by other voters. 42 U.S.C. § 1973b(c). The Act does not invalidate the poll tax outright, but gives the Attorney General power to bring actions challenging poll taxes where they have the purpose or effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973h.

The Voting Rights Act did not, at the moment of its adoption, automatically halt discriminatory districting plans,

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[2] *See* Brief for the Federal Appellant at 18-24; Brief of Appellants George Price, *et al.*, at 22-25 ("Price Opening Brief"); Brief on Reargument for the Federal Appellant at 9-13.

registration procedures, or other mechanisms that already were known to exclude or impair black voter participation. *See, e.g., Lane* v. *Wilson,* 307 U.S. 268 (1939) (12-day limit on registration for voters not previously eligible to vote under grandfather clause); *Gomillion* v. *Lightfoot,* 364 U.S. 339 (1960) (racially gerrymandered municipal boundary). Congress clearly recognized that, after it invalidated tests and devices, there would be continued and renewed efforts to keep black voters from the polls. Congress included in the Voting Rights Act such extraordinary remedies as permitting the appointment by the Attorney General of federal examiners to monitor elections, 42 U.S.C. § 1973d, because it concluded that the full panoply of discrimination aimed at keeping black citizens from voting only could be rooted out, on a case-by-case basis, by the operation over time of § 5 as well as § 2 and other provisions of the Act.

B. The analysis of discriminatory purpose is not a "free-floating" inquiry that requires jurisdictions to "disprove the validity of hypothetical alternatives." Appellee's Br. at 4, 3. Far from floating free, the inquiry is firmly tethered to the framework adopted in *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.,* 429 U.S. 252 (1977). *See* App. 48a. This Court's holding in *Bossier I* that a covered jurisdiction's "purpose" should be measured in a § 5 declaratory judgment action using the *Arlington Heights* framework drew on one of the most fundamental principles the Court has articulated in civil rights cases in the last quarter century. When a federal court is called upon to inquire about whether a governmental body has acted with an invidious racial intent, it cannot limit its inquiry to the effects of the action alone, because "'the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.'" *Rogers* v. *Lodge,* 458 U.S. 613, 617 (1982), quoting *Washington* v. *Davis,* 426 U.S. 229, 240 (1976). *Accord Miller,* 515 U.S. at 913 ("the presumed racial purpose of state action, not its stark manifestation" violates the Constitution); *Personnel Adm'r of Massachusetts* v. *Feeney,* 442 U.S. 256, 279 (1979). Under *Arlington Heights,* more than a "deliberate

perpetuation of the *status quo,*" Appellee's Br. at 4, is required to violate the purpose prong of § 5; it must be a racially motivated perpetuation of the status quo.

Appellee is simply wrong that preserving the prohibition in § 5 of voting changes motivated by invidious racial discrimination would expand the § 5 inquiry to require comparisons with hypothetical, undiluted plans, or force covered jurisdictions to "maximize" minority representation in districting plans. *See* Appellee's Br. at 4, 12-17. What the School Board characterizes as the Department of Justice's "maximization policy" of the 1990s sheds no light on the intent of Congress in 1965. Moreover, the authorities the School Board tries to muster do not support its conclusion that demonstrating a legitimate non-racial purpose requires maximization. For example, Appellee states: "Under appellants' free-floating 'purpose' inquiry, . . . Justice Department lawyers or Section 5 'courts must *choose* an objectively reasonable alternative practice as a benchmark for the [dilutive purpose] comparison.'" Appellee's Br. at 17, quoting *Holder* v. *Hall,* 512 U.S. 874, 888 (1994) (O'Connor, J., concurring in part and concurring in the judgment) (emphasis supplied by Appellee). In fact, Justice O'Connor stated that in a *§ 2 vote dilution case* a "court must choose an objectively reasonable alternative practice as a benchmark for the dilution comparison." Her analysis had nothing to do with "purpose."[3]

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[3] Appellee asserts that § 2 prohibits "a dilutive purpose," and cites *Thornburg* v. *Gingles,* 478 U.S. 30, 43-44 (1986), for the proposition that "Section 2 prohibits both an unintentional dilutive effect ('result') and a purposeful dilutive effect." Appellee's Br. at 11. To the contrary, § 2 provides no support for Appellee's hypothesis that since retrogressive effects are reached by § 5, it is unnecessary to reach non-retrogressive but racially hostile purposes. The Court held in *Bossier I* that "[w]hen Congress amended § 2 in 1982, it clearly expressed its desire that § 2 *not* have an intent component." App. 40a (emphasis in original) (citations omitted). *Thornburg* described the legislative history demonstrating that discriminatory intent or purpose is not required to establish a violation of § 2. *Thornburg,* 478 U.S. at 43-44.

Appellee argues that a prohibition of discriminatory purpose "fails to significantly expand a corresponding prohibition against an impermissible effect." Appellee's Br. at 11. By conceding that the purpose prong reaches some racially discriminatory voting changes not barred from preclearance by the effect test, Appellee identifies an important category of cases that should be covered by § 5, even if the number of such cases is not significant. The prohibition of discriminatory purpose bars some voting changes without a retrogressive effect because, in a discriminatory purpose analysis under *Arlington Heights*, "effect" is relevant but not dispositive. *See* App. 45a. The key to a covered jurisdiction's presentation of a prima facie case on "purpose" in a § 5 declaratory judgment action is its ability to state and support race-neutral, objectively verifiable reasons for its proposed voting change. Defendants then must point to evidence of racial intent. A neutral or ameliorative plan may be shown to be racially discriminatory under this analysis. On the other hand, a neutral or ameliorative plan that fails to "maximize" minority voting strength should be precleared if the evidence overall shows that the plan was not the product of racial discrimination but was adopted for sound and appropriate reasons.

C. In an effort to assure the Court that racist and insidious voting changes will not have to be precleared if "purpose" is limited to retrogressive intent, Appellee is forced to expand the concept of retrogression beyond recognizable bounds. *See, e.g.,* Appellee's Br. at 13 n.6 (suggesting that a voting change making black voter participation "literally impossible" would be retrogressive if the status quo makes it "nearly impossible"). This effort is based on a misreading of the § 5 cases and misunderstanding of the role of § 5.

The School Board suggests that the annexation at issue in *City of Richmond* v. *United States,* 422 U.S. 358 (1975), had a "retrogressive effect" but was "permissible under Section 5 unless the purpose of the annexation [was] to cause *such retrogression*, rather than to further a legitimate goal."

Appellee's Br. at 11 (emphasis added). Contrary to Appellee's suggestion, the annexation in *City of Richmond* was held by the Court not to be retrogressive within the meaning of the term "effect." *See Beer,* 425 U.S. at 139 n.11 ("*City of Richmond* . . . thus decided when a change with an adverse impact on previous Negro voting power met the 'effect' standard of § 5"). The remand in *City of Richmond* was not tied to "retrogressive purpose," but to the broader question of discriminatory purpose, *i.e.,* whether the annexation was "taken for the purpose of discriminating against Negroes on account of their race" because such a discriminatory enactment "has no legitimacy at all under our Constitution *or under the statute.*" 422 U.S. at 378 (emphasis added).

Appellee attempts to distinguish *City of Pleasant Grove* v. *United States,* 479 U.S. 462 (1987), by arguing that the Court's decision is best explained on the basis that the annexation could have a retrogressive effect on hypothetical future black voters, and so could be characterized as being infected with a retrogressive purpose. Appellee's Br. at 20. The text does not support such a reading. Coupled with Appellee's effort to turn *Busbee* v. *Smith,* 549 F. Supp. 494 (D.D.C. 1982), *aff'd,* 459 U.S. 1166 (1983), into a holding on retrogressive effect or retrogressive purpose even though the district court specifically found no retrogression, 549 F. Supp. at 516, Appellee is sowing seeds of confusion that will confound future § 5 cases. If hypothetical future black voters become part of the retrogression analysis, it has no logical boundary. Indeed, under Appellee's expansive retrogression theory, every § 5 declaratory judgment trial in a redistricting case could involve days of testimony by competing demographic experts hypothesizing different scenarios on the potential growth of black voting populations. Moreover, Appellee does not limit its theory to districting cases, but would consider hypothetical future retrogressive effects of a myriad of voting changes, even a decision to reduce polling place hours. *See* Appellee's Br. at 20-21. If a covered jurisdiction really curtailed polling hours the day before the first black voter moves in, and application of the *Arlington Heights* framework reveals an effort to keep that one black citizen

from voting, the issue should be analyzed as straightforward, racially invidious discrimination rather than as hypothetical, future retrogression based on the impact on a single voter.

D. The School Board's argument that preclearance of voting changes adopted with racially invidious intent is harmless as long as the effect is not retrogressive leads it to some strange conclusions. Appellee argues that because the § 5 declaratory judgment court has power only to preclear or to reject proposed voting changes, § 5 should not bar purposefully discriminatory neutral or ameliorative changes, lest denial of preclearance harm minority voters. Appellee's Br. at 4-5. It should not be assumed that the status quo will be maintained upon rejection of a voting change that is the product of racial animus, but neutral or ameliorative in effect. Covered jurisdictions often proffer changes because maintaining the status quo is not an option. Redistricting, for example, must be done after the census to comply with one-person one-vote requirements. Maintaining a maladjusted plan is not an option when the court denies preclearance to a neutral plan adopted with a racially hostile intent.

Giving black citizens the opportunity to advocate locally for fairness and non-discriminatory treatment upon rejection of such a proposal does justice to them and furthers the principles of democracy and fair play that benefit all citizens. Even where a proposed voting change is unmasked in a § 5 proceeding as the product of invidious racial animus, the federalism considerations that underlie § 5 require that the covered jurisdiction go back to the community, through its ordinary processes, to consider alternatives. Such a return to local processes, so they can operate free of racial bias, is a fairer result than building into the interpretation of the statute an assumption that black and other minority voters benefit by a federal court's preclearance of a non-retrogressive voting change adopted with racial animus against them.

The proof in this case demonstrates that Mr. Price and the other private Appellants were denied this basic opportunity to have their ideas and issues considered, free of racial bias, in the School Board's redistricting process. The School Board

persistently and consistently rejected the efforts of representatives of the black community to be involved in the districting process, instead making critical decisions behind closed doors. Price Opening Brief at 33-37. The School Board did an about-face regarding the Police Jury plan, App. 30a-31a, as soon as it realized that it could draw two compact, contiguous majority-black election districts in a 12-member single-district election plan while complying with one-person, one-vote principles. Price Opening Brief at 33-37. The Police Jury plan flew in the face of the School Board's traditional districting goals and faced strong public opposition expressed in a petition and public hearing. *Id.* at 36. The plan wreaked havoc with incumbencies, contained districts that were not compact, distributed schools unevenly across the election districts, and had one district that was not contiguous. *Id.* at 29. The plan violated a state law requirement that no election district deviate from the one-person, one-vote ideal by more than 5%. *Id.* The plan avoided the obvious opportunity to create a majority-black district in Bossier City and a readily discernible majority-black district in the northern part of the parish. *Id.* at 28-29.

The district court summarized its findings as "tending to establish that the board departed from its normal practices," and found that this "establishes rather clearly that the board did not welcome improvement in the position of racial minorities with respect to their effective exercise of the electoral franchise." App. 6a, 7a. The School Board's motive was clear: With an unresolved federal court school desegregation case and a history of shunting aside concerns of black parents about the education of their children, Price Opening Brief at 30-33, election of candidates chosen by the black community to the School Board would require attention to that community's concerns. The district court found: "The intent [this school desegregation history] proves . . . is a tenacious determination to maintain the status quo." App. 7a.

It is absurd to suggest, in a case in which there never has been a black majority election district, and no black School Board member ever had been elected at the time the plan was

adopted, that the evil the Court needs to fear is "maximization" of minority voting strength. The School Board's proposed plan fails the § 5 purpose prong not because it rejected any particular district lines, but because it denied the Price Appellants and other black citizens the simple justice of an opportunity to have their voices heard free of discriminatory intent against them in the process of redistricting the school district in which they live and pay taxes, and where their children and grandchildren attend school.

Indeed, the important principles of federalism that Appellee invokes, *see* Appellee's Br. at 17, are consistent with a holding that any voting change should be denied § 5 preclearance if the covered jurisdiction cannot show that it lacks a racially discriminatory purpose:

> No such problem [of whether a federal remedy intrudes in subjects basically of concern to the States] is raised by a prohibition against invidious discrimination of any sort . . . . Since the Civil War, the Federal Government and the federal courts have been the "'*primary* and powerful reliances'" in protecting citizens against such discrimination. *Steffel* v. *Thompson*, 415 U.S. 452, 464 [(1974)], quoting F. Frankfurter & J. Landis, *The Business of the Supreme Court* 65 (1928). [*Cannon* v. *University of Chicago*, 441 U.S. 677, 708 (1979) (emphasis in original).]

CONCLUSION

For these reasons and those set forth in the earlier briefs in this matter, the Court should reverse the judgment below.

Respectfully submitted,

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OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

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ARGUMENT

1. Our initial briefs establish that under *Beer v. United States*, 425 U.S. 130 (1976), and its progeny, a voting change "abridg[es]" minority voting power under Section 5 only if it causes a retrogression in minority voting rights. Consequently, just as a change cannot have the "effect of . . . abridging the right to vote" unless it has a retrogressive effect, it cannot have the "purpose . . . of . . . abridging" unless it has a retrogressive purpose.

Apparently recognizing that every principle of English usage compels this conclusion, the United States now makes the astonishing assertion that "*Beer* . . . did not decide that the phrase 'deny or abridging the right to vote,' as used in Section 5, refers only to retrogression." U.S. Rearg. Br. at 5.[1] Incredibly, in support of this assertion, the United States quotes the very passage from *Beer* that most directly refutes this assertion, *i.e.*, a nonretrogressive change " 'can hardly have the "effect" of diluting or *abridging* the right to vote on account of race within the meaning of § 5.' " U.S. Rearg. Br. at 5 (quoting *Beer*, 425 U.S. at 141 (emphasis added)). *See also City of Lockhart v. United States*, 460 U.S. 125, 136 (1983) (emphasis added) (perpetuation of potentially discriminatory *status quo* did not "have the effect of denying or *abridging* the right to vote on account of race . . . "). Thus, *Beer* clearly states that a change has the effect of abridging Section 5 voting rights only if it reduces minority power from that which existed prior to the change.

Moreover, *Beer's* holding that Section 5 reaches only retrogressive effect is necessarily an interpretation of the statutory term, "abridging." *Beer's* holding that Section 5 prohibits only changes with the "effect" of retrogressing is necessarily a holding that,

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[1] In this brief, citations are to the Brief on Reargument for the Federal Appellant ("U.S. Rearg. Br."); Brief of Appellee ("Initial Br."); Brief of Appellee on Reargument ("App. Rearg. Br."); Supplemental Brief on Reargument of Appellants George Price, *et al.* ("A-I Rearg. Br."); and Brief for the Federal Appellant ("U.S. Initial Br.").

under Section 5, "abridging" is the same as "retrogressing." Otherwise, a nonretrogressive change could have the effect of "abridging," which all agree it cannot.

The United States nevertheless asserts that "abridge" under Section 5 must go beyond retrogression because "abridge" goes beyond retrogression under Section 2. If anything is clear, however, it is that the abridgment proscribed by Section 2 is entirely different than the abridgment prohibited by Section 5.[2] As the United States elsewhere concedes, a voting qualification may "result in . . . abridgement" under Section 2 only if it creates the dilutive effect found in *White v. Regester*, 412 U.S. 755 (1973), but has the effect of abridgment under Section 5 only if it is retrogressive. *See* U.S. Rearg. Br. at 4 n.3 (internal quotations omitted). Since it is undisputed and clear that the abridging effect prohibited by Section 5 is entirely different than the abridging result prohibited by Section 2, the normal presumption that the same language in different statutory sections has the same meaning plainly does not pertain here.

The United States also argues that "the purpose and effect prongs of Section 5 are not coterminous." U.S. Rearg. Br. at 8. It notes that otherwise permissible acts may

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[2] The United States also notes, correctly, that the "abridge" language in Section 3(c) of the Act is patterned after and has the same meaning as the identical language in Section 5. 42 U.S.C. § 1973a(c). U.S. Rearg. Br. at 3. But it is plainly wrong in suggesting that Section 3(c) must reach nonretrogressive changes because, otherwise, the Justice Department would be forced to preclear voting changes which are indistinguishable from the voting procedure that the Court just struck down as unconstitutional. *Id.* As we explained in our initial brief, procedures which have been adjudicated by a court to be unconstitutional will never be submitted for preclearance. Rather, the court which found that a voting procedure violated the Constitution would directly remedy that adjudged violation, and plainly could not accept a proposed "remedy" with precisely the same discriminatory purpose and effect. Initial Br. at 40 n.30. The text of Section 3(c) itself makes this clear. The authorization for district courts to require preclearance of other voting changes in the future comes only "*in addition to* such relief as [the court] may grant" with respect to the adjudged constitutional violation. 42 U.S.C. § 1973a(c) (emphasis added).

" 'become unlawful when done to accomplish an unlawful end.' " *Id.* (quoting *City of Richmond v. United States*, 422 U.S. 358, 379 (1975)). This is, of course, entirely true and entirely irrelevant. Contrary to the straw man erected by the United States, we have never argued that "purpose and effect" are "coterminous."[3] We have contended, rather, that "abridge" and "abridge" are coterminous or, more accurately, that the same word must mean the same thing in the same statutory sentence. Since perpetuating a discriminatory *status quo* does not actually abridge any voting rights – *i.e.*, does not have the "effect" of "abridging" – an intent to perpetuate the *status quo* cannot be a "purpose" of "abridging." Since maintaining the *status quo* is not an "unlawful end" under Section 5, intending to maintain the *status quo* is not an intent to "accomplish an unlawful end."[4]

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[3] As the United States correctly notes, the law often treats a deliberate effort to do X differently than an action which unintentionally results in X. "In the words of Justice Holmes, 'even a dog distinguishes between being stumbled over and being kicked.' " *C&A Carbone, Inc. v. Clarkstown*, 511 U.S. 383, 424 n.12 (1994) (Souter, J., dissenting) (citation omitted). But if actually killing a dog is not a "homicide" under state law, intentionally killing a dog cannot be an "intentional homicide." By the same token, since a nonretrogressive change does not "abridge" voting rights, a change intended to be nonretrogressive cannot purposefully abridge those rights.

[4] The United States again speculates that *Beer* narrowly interpreted Section 5 to reach only changes with a retrogressive effect because the Court was purportedly concerned that a broader effects test would "reach beyond the Constitution itself" – a concern that is not implicated by a purpose test that extends beyond retrogression. U.S. Rearg. Br. at 6-7. As we have shown, this is plainly untrue on every level: (1) there is absolutely no language in *Beer* or its progeny reflecting any concern about a statute which imposes an effects test that goes beyond retrogression or the Constitution; (2) a *retrogressive* effect test also "reach[es] beyond the Constitution itself," by attaching liability without any finding of an invidious purpose; (3) it was entirely unclear in *1976* whether a statute prohibiting an unintended dilutive result even went beyond the Constitution; and (4) even if the Constitution itself did not prohibit dilutive results, no Justice perceived any problem with *Congress* imposing such a test, as it ultimately did in 1982 for Section 2, particularly since the same Court, just prior to *Beer*, had decided *White v. Regester* and read an "effects

The United States next canvasses the same legislative history examined in *Beer* and cites various pronouncements suggesting that "Congress was concerned that covered jurisdictions would adopt new devices to freeze the *existing* disparity in voter registration between blacks and whites." U.S. Rearg. Br. at 9. This is quite true, but Congress intended to eliminate that registration disparity by "freezing election procedures" other than literacy tests and similar devices in order to prevent, as the United States elsewhere concedes, "covered jurisdictions [from] employ[ing] new voting practices to evade the effect of the suspension of discriminatory tests and devices in Section 4 of the Act, 42 U.S.C. 1973b." U.S. Rearg. Br. at 20. If poll taxes and literacy tests – "the principal method used to bar Negroes from the polls" – are eliminated, and other procedures remain the same, then the registration disparity existing prior to the Act would obviously not be perpetuated, but would be dramatically reduced. *South Carolina v. Katzenbach*, 383 U.S. 301, 310 (1966). The only way the registration disparity would be "perpetuated" is if procedures other than the banned tests and devices were made worse, so that they could fill the discriminatory "gap" caused by the banning of tests. Accordingly, forbidding retrogressive changes in *other* voting procedures – which were presumably neutral since they were designed for a white electorate – would clearly not result in perpetuating the existing registration disparity, but would plainly avoid such perpetuation.

For this reason, in the legislative history cited by the United States, the *only* examples of changes prohibited by Section 5 are those which are plainly retrogressive because they are worse than the *status quo, i.e.*, "*adopting* at-large elections [over the less dilutive single-member schemes], *increasing* filing fees, *abolishing* elective offices, and *extending* the terms of white incumbents." U.S. Rearg. Br. at 12 (emphasis added). Thus, the examples helpfully catalogued by the United States plainly contradict appellants' position that Section 5 invalidates voting changes which, for example, *reduce* filing fees or white incumbents' terms, if the

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test" into Title VII on the basis of far less compelling statutory language. *See Griggs v. Duke Power*, 401 U.S. 424 (1971). *See* Initial Br. at 24-25 & n.19, 34 n.25.

Justice Department finds that they would have been reduced even more absent racial considerations.

In short, the Solicitor General's legislative history argument is based on a fundamental distortion of the nonretrogression principle actually established by *Beer*. The United States maintains that a change cannot be retrogressive unless it reduces overall minority voter participation below the sorry levels that existed in 1965 and then contends that Congress could not have limited Section 5 to prevent even "further diminishment" of this abysmal state of affairs. U.S. Rearg. Br. at 11. But obviously a change in voting procedure is retrogressive even if it does not reduce overall minority registration or voting strength, so long as it makes access to the ballot or voting strength more difficult than the particular procedure being replaced. Since, as noted, that retrogression principle would prevent voting procedures other than tests and devices from accomplishing the disenfranchisement previously accomplished by literacy tests, that principle obviously would accomplish Congress' goal of preventing southern jurisdictions from "replac[ing]" the "old devices for disenfranchisement" with "new ones." U.S. Rearg. Br. at 12 (quoting S. Rep. No. 417, 97th Cong., 2d Sess., at 6 (1982)).[5]

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[5] The Solicitor General disingenuously maintains that the following passage from the 1965 Senate Report somehow suggests that Section 5 incorporated the substantive standard of the Fifteenth Amendment concerning purposeful abridgement of minority voting rights: " '[S]o long as State laws or practices erecting voting qualifications do not run afoul [of] the 15th amendment or other provisions of the Constitution, they stand undisturbed.' " U.S. Rearg. Br. at 11 (quoting S. Rep. No. 162, 89th Cong., 1st Sess., Pt. 3, at 18 (1965)). This passage had absolutely nothing to do with Section 5, or its substantive standard. Rather, as the very heading of the section of the Senate Report makes clear, it was simply responding to the argument that the Act was unconstitutional because it interfered with "the right of the States to fix qualifications for voting," by pointing out that the States would unconstitutionally abuse this authority if their qualifications ran "afoul of the 15th amendment." S. Rep No. 162, Pt. 3, at 18. This truism does not suggest that Section 5 would, of its own force, invalidate any Fifteenth Amendment violation by a State, as the very next sentence makes even clearer: "But when State power is abused, it is subject

Indeed, *Beer* itself makes crystal clear that interpreting Section 5 to reach only retrogressive changes is fully consistent with Congress' goal of affirmatively increasing minority voter participation and preventing covered jurisdictions from perpetuating the prior discriminatory regime by replacing the invalidated discriminatory devices with new ones. *Beer* found that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities . . . ," *Beer*, 425 U.S. at 141, only *after* noting that Section 5 was intended to prevent covered jurisdictions from " 'staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down' " and to " ' "shift the advantage of time and inertia from the perpetrators of the evil to its victim." ' " *Beer*, 425 U.S. at 140 (quoting H.R. Rep. No. 94-196, at 57-58 (1975)) (citation omitted). The *Beer* Court understood that Congress intended to increase minority voting by "freezing election procedures" in order to prevent States from " 'undo[ing] or defeat[ing] the rights recently won' by Negroes" and to " 'insure that [the gains thus far achieved in minority political participation] shall not be destroyed through new [discriminatory] procedures and techniques.' " *Id.* at 140-41 (quoting H.R. Rep. No. 91-397, at 8 (1970) and S. Rep. No. 94-295, at 19 (1975)).[6]

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to Federal action by Congress as well as by the courts *under the 15th amendment*." *Id.* More generally, we fully agree that the Voting Rights Act, including Section 5, was obviously intended to secure and protect the Fifteenth Amendment's guarantee against racial discrimination in voting. *See* H.R. Rep. No. 439, 89th Cong., 1st Sess., at 26 (1965) (*quoted in* U.S. Rearg. Br. at 11). But Section 5 did not accomplish that goal by adopting the Fifteenth Amendment's abridgement standard. Section 5 could not do this, since, unlike the Fifteenth Amendment, it deals only with changes to the *status quo*. Of course, the United States does not really believe that Section 5 incorporated the Fifteenth Amendment's substantive standards because, if it did, there would be a serious, unresolved question concerning whether Section 5 even reaches vote *dilution* mechanisms such as redistricting plans. *See Voinovich v. Quilter*, 507 U.S. 146, 159 (1993).

[6] Contrary to the Solicitor General's assertion, by preventing such retrogression, Section 5 did indeed " 'play an important role' " in

2. Appellants devote the bulk of their briefs to arguing that the covered jurisdiction has the burden of persuasion with respect to the purpose prong of Section 5, just as it has the burden to show the absence of an impermissible effect. To be sure, just as the covered jurisdiction has the burden of showing that a voting change does not have the effect of reducing minority voting power, it must also show that the purpose of the change was not to reduce minority voting strength. The question here, however, is whether the covered jurisdiction must shoulder an *additional* burden with respect to "purpose" that it does not have with respect to "effect," by proving not only that the change has a nonretrogressive purpose but also that it is not motivated in any way by considerations of race.

Appellants seek to justify this additional showing for "purpose" not because the language of Section 5 draws any distinction between purpose and effect, but because Section 5's broader "goal" was purportedly to prohibit unconstitutional voting changes. Accordingly, it would be inequitable and unreasonable to shift the burden used in those constitutional cases simply because the covered jurisdiction was forced unwillingly to litigate this issue in the special District of Columbia Section 5 Court as a plaintiff, as the *Bossier I* dissenting opinion acknowledged with respect to Section 2. *See* App. Rearg. Br. at 23. Appellants cannot explain why a different rule should obtain with respect to the Constitution or why the covered jurisdiction has the constitutional burden when, even under their interpretation, *Beer* plainly placed the burden on the Attorney General to show a constitutional violation. App. Rearg. Br. at 22.[7]

" 'rid[ding] the country of racial discrimination in voting.' " *Beer*, 425 U.S. at 140 (quoting *South Carolina*, 383 U.S. at 315). So, contrary to the United States' contention, the legislative history lauding the valuable role of Section 5 is hardly "inconsistent" with interpreting it to reach retrogression.

[7] Appellant-intervenors do seem to suggest that covered jurisdictions should have the burden simply because they are nominal plaintiffs in the Section 5 declaratory judgment proceeding. But the standard rule is that "[i]t would seem rather anomalous that so important a matter [as the burden

Rather, appellants argue that placing the burden on covered jurisdictions is fair because they possess the information on the jurisdiction's intent and because Congress determined that these jurisdictions were generally racist in the 1960s, thus "establish[ing], in effect, a presumption that future voting practices enacted by covered jurisdictions would also have a discriminatory purpose. . . . " U.S. Rearg. Br. at 20. Both factors are also present in traditional constitutional voting rights challenges to jurisdictions covered by Section 5, where minority plaintiffs bear the burden of proof, thus demonstrating that these factors are plainly insufficient to shift the normal burden. Moreover, under other civil rights statutes, the alleged victim of discrimination bears the burden of persuasion to prove discriminatory purpose. *See Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981). Here, as in those cases, it is the United States and minority parties who are contending that the covered jurisdiction will harm their civil rights,

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of proof] should depend on the chance of who first sues and the outstanding authority in the field argues against such a result." *Preferred Accident Ins. Co. v. Grasso*, 186 F.2d 987, 991 (2d Cir. 1951) (citing E. Borchard, *Declaratory Judgments*, at 404-09 (2d ed. 1941). *See also Fireman Fund Ins. Co. v. Videfreeze Corp.*, 540 F.2d 1171, 1176 & n.4 (3d Cir. 1976), *cert. denied*, 429 U.S. 1053 (1977); *American Eagle Ins. Co. v. Thompson*, 85 F.3d 327 (8th Cir. 1996). This is particularly true where, as here and in patent cases, placing the burden on the plaintiff would require him to "prove a negative." 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 57.62[2][d] (1999); *see also* Borchard, *supra; Under Sea Indus. v. Dacor Corp.*, 833 F.2d 1551, 1557 (Fed. Cir. 1987). Moreover, those courts that have placed the burden on declaratory judgment plaintiffs have done so because it is "reasonable and fair that one who brings another into court," and thus may select the forum and enjoy the other "advantages" of a plaintiff, should have the burden that is normally borne by those seeking to have the court prevent another from taking some adverse action. *Liberty Mut. Ins. Co. v. Sweeney*, 216 F.2d 209, 210-11 (3d Cir. 1954). Here, of course, covered jurisdictions are not coercing the United States into court, but are forced by Section 5 to seek preclearance and cannot select the forum, but are forced to the distant, disadvantageous court in Washington, D.C.

and thus should bear the burden of proving this harm.[8] This is particularly true since minority voters have *not* suffered the only adverse effect concededly prohibited by Section 5 – *i.e.*, retrogression.

The covered jurisdictions' allegedly superior access to the relevant facts is a complete non-factor in an era where "liberal civil discovery rules give [minority proponents] broad access to" such information, and thus even the United States concedes that "[d]iscovery should give the government the opportunity to test [the covered jurisdiction's] assertions and to obtain any contrary or impeaching evidence." *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. 642, 657 (1989); U.S. Rearg. Br. at 22. *See* 2 J. STRONG, MCCORMICK ON EVIDENCE § 337, at 439 n.11 (4th ed. 1992). Regardless of who has the burden of ultimate persuasion, the covered jurisdiction will, "[a]s a practical matter . . . and in the real-life sequence of a trial" have to offer a nondiscriminatory explanation for the voting change because it "knows that its failure to introduce evidence of a nondiscriminatory reason will cause judgment to go against it. . . . " *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510 (1993).[9]

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[8] *See, e.g., Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. 642, 667 (1989) (Stevens, J., dissenting); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 292 (1986) (O'Connor, J., concurring in part and concurring in the judgment).

[9] In the redistricting context, where "the legislature always is *aware* of race," *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (emphasis in original), an apportionment plan violates the Constitution only if it "subordinate[s] traditional race-neutral districting principles" and "race was the *predominant* factor motivating the legislature's decision." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). The Constitution clearly does not prohibit redistricting plans where race was "*a* motivating factor," as appellants contend. U.S. Initial Br. at 46-47. (Even outside the redistricting context, where race was "a substantial or motivating factor," *Hunter v. Underwood* 471 U.S. 222, 225 (1985) (internal quotations omitted), a jurisdiction is not liable if it can show that it would have made the same decision absent the impermissible factor. *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 271 n.21 (1977)). Since there is no basis for concluding that Section 5's purpose prong goes *beyond* the Constitution

Moreover, even if it could be plausibly "presumed" that every voting change by every covered jurisdiction is motivated by a discriminatory purpose because of congressional findings from 34 (or 17) years ago, this is not an argument for shifting the burden of *persuasion* to the covered jurisdiction. Even where *specific* evidence " 'creates a presumption that the [particular party] unlawfully discriminated,' " it is a "fundamental principle of [Federal] Rule [of Evidence] 301 that a presumption does not shift the burden of proof," in the sense of the risk of nonpersuasion. *St. Mary's Honor Ctr.*, 509 U.S. at 506, 511 (quoting *Burdine*, 450 U.S. at 254). In any event, using the South's sorry history of discrimination as a basis for requiring jurisdictions to prove themselves innocent of a constitutional violation would be impermissible triple counting. That history is the reason they must bear the extraordinary Section 5 burden of disproving retrogression to Washington courts or bureaucrats *before* implementing their sovereign acts and is also a negative factor under the *Arlington Heights* analysis of discriminatory purpose. *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977). To also use that history as a reason to impose an additional burden on the constitutional issue would plainly be unwarranted.

Respectfully submitted,

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by prohibiting any consideration of race in redistricting, any remand order in this case should require the district court to determine whether defendants have proved that the Board's plan subordinated traditional districting principles and was predominantly motivated by racial *animus*.